

No. 11483

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

LARRY FINLEY and MIRIAM FINLEY,

Appellants,

vs.

MUSIC CORPORATION OF AMERICA, a corpora-
tion, H. E. BISHOP and LAWRENCE BARNETT,

Appellees,

and

MUSIC CORPORATION OF AMERICA, a corpora-
tion, H. E. BISHOP and LAWRENCE BARNETT,

Appellants,

vs.

LARRY FINLEY and MIRIAM FINLEY,

Appellees,

TRANSCRIPT OF RECORD

(In Four Volumes)

VOLUME II

(Pages 321 to 656, Inclusive)

Upon Appeals from the District Court of the United States
for the Southern District of California,

Central Division

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PAUL P. O'BRIEN, JR.

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(Testimony of Isabel Katleman)

A. I don't believe so. I don't believe I questioned Mr. McDonald about it. I had presumed that if Mr. Finley had been in, he would have come in to say "hello" to me also.

Q. Then, that was just merely a voluntary statement, that you did not know whether Mr. Finley was in the building or not and he had gone into Mr. McDonald's office, or he may have gone into Mr. McDonald's office?

A. Possibly, yes. [305]

Q. Did Mr. Jaffe tell you what connection he had with the case?

A. He introduced—Mr. Karp introduced him as being a colleague in the law office which was handling Mr. Finley's case. Yes; in that way.

Q. In other words, you understood him to be one of the attorneys for Mr. Finley? A. Yes.

Q. Did you discuss Mission Beach at all?

A. I believe they asked me if I had seen it and I said, "Yes." I thought it was a beautiful ballroom, and that was all.

Mr. Doherty: I think that is all, Miss Katleman.

Mr. Christensen: Thank you very much, Miss Katleman. I believe you may be excused.

The Court: We will take our recess now. Ladies and gentlemen, remember the admonition and keep its terms inviolate. Occupy the jury room, please.

(Short recess.)

The Court: All present. Proceed.

WILLIAM McDONALD,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: William McDonald. [306]

Direct Examination

By Mr. Christensen:

Q. Commonly, Billy, isn't it? A. Yes, sir.

Q. Billy McDonald. Your business, occupation or profession, sir, is what?

A. I am now the head of the band department of the Frederick Bros. Agency.

Q. What is the business of Frederick Bros. Agency, sir?

A. It is a booking agent representing various bands and artists throughout the country; a nation-wide organization.

Q. For what period of time have you been so employed, sir?

A. I was with them for about 8 months and left for about 5 weeks, and I went back with them in February, last year; so I have been with them practically a year solid since returning to the Agency.

Q. During that five weeks' period you were employed by whom? A. Mr. Finley.

Q. What were your duties as such?

A. My capacity was to manage two ballrooms which he had, and also to buy talent for the same.

Q. Which ballrooms are you referring to, sir?

A. Trianon ballroom in San Diego and the Mission Beach [307] ballroom at Mission Beach.

(Testimony of William McDonald)

Q. When you went to work for Mr. Finley in February, as I remember it, in 1945—is that true or not?

A. I believe I left Mr. Finley in 1945.

Q. Yes. And was it the month of February or was it some other month? I am not quite clear on that.

A. No. I went to work with him about four or five days prior to the first of the year, if I remember right, of 1945, and continued with him for a month.

Q. I see. During the time you were with him did you make attempts or any attempt to book any band or orchestra from M. C. A. or with M. C. A. ?

A. Yes.

Q. When was that, sir? The first one let us take.

A. Well, as far as the bands, our first attempt was not at a band. I believe it was an attraction, because we were told we couldn't have bands.

Q. Because you were told you couldn't have bands. Who told you that?

A. Well, I phoned Mr. Bishop and Mr. Bishop said that Mr. Daillard got the first choice of the bands.

Q. When was that, sir?

Mr. Doherty: Would you lay the foundation of time and persons present?

Mr. Christensen: That is what I am asking him about.
[308] Thank you, Mr. Doherty.

Q. When was that, sir?

A. Just after I went onto the payroll of Mr. Finley.

Q. Will you relate all of that conversation you had with Mr. Bishop on the telephone at that time, sir?

A. As a matter of fact, the conversation, I was trying to line up a series of bands for Mission Beach for the coming year, prior to our opening, or, rather, our full

(Testimony of William McDonald)

week opening for the summer, which I believe was around May 18th or 11th, something like that; and I wanted to get some weekend bands. Mr. Bishop related to me that he could not give us weekend bands at that time; that Mr. Dailard had first choice on all bands; if there was anything left over, why, he would submit them to us. That was the gist of our conversation.

Q. And when did you next talk with anybody connected with M. C. A. ?

A. Mr. Finley and I went in to try to buy some attractions, into the Music Corporation of America. The exact date I don't remember.

Q. When you say "attractions" what do you mean by attractions, sir?

A. Well, I mean somebody that is of a national prominence, or that we think is of national prominence, that might mean profitable sales transactions. In other words, we buy them and we think they will bring enough money [309] in the door to make a nickel, also.

Q. Let us put that in another way, then. There is a difference, then, I take it, between orchestras or bands and attractions; is that true or untrue?

A. Well, when you have a place of entertainment, there's two things that will draw people in the front door: either a band of national prominence or an artist of national prominence.

Q. And you then say you went with Mr. Finley to the office of Music Corporation of America in an attempt to secure some attractions? A. Yes.

Q. Please tell me when that was, sir?

A. Well, the exact date I can't remember. It would be sometime in January, when I was under the salary of

(Testimony of William McDonald)

Mr. Finley and accompanying him on his business trips more or less.

Q. To whom did you speak there of the M. C. A. ?

A. We went into Mr. Burnet's office.

Q. All right. Was there any person other than you and Mr. Finley and Mr. Burnet present, sir?

A. Mr. Ken Later was called.

The reporter: Mr. Later?

The Witness: Mr. Ken Later was called in.

Mr. Doherty: L-a-t-e-r, Mr. Reporter.

Q. By Mr. Christensen: Now, will you tell me what was [319] said and what was done on that occasion, sir?

A. Well, we had taken it for granted that due to the existing circumstances at that time, that being very few bands available due to the war conditions, that we would have to turn around and buy attractions to bring people into the ballroom; in other words, individual personalities, such as screen stars, recording stars, et cetera. So we went in to try to make a deal with Bonita Granville and the King Sisters, I believe. [311]

Q. That is with Barnet?

A. Mr. Barnet, yes.

Q. And Mr. Later was present, however?

A. Mr. Later was called in because I believe he was in the acts department at that time.

Q. Now, go ahead, tell us what was said and done, please.

Mr. Doherty: May I interrupt for a moment? The charge in the complaint is the monopoly of bands. Now, we are going into the field of attractions, and there is no issue in the case respecting attractions or any monopoly or restraint of trade in respect to attractions. I am not

(Testimony of William McDonald)

going to press it, but I am making the suggestion to your Honor that it is objectionable, it seems to me, and not within the issues of the case.

The Court: I think we should groove the case in the issues that are framed by the pleadings, Mr. Christensen, and these questions should be directed to the witness to do that very thing.

Mr. Christensen: Would your Honor let me invite attention to the fact that we do set forth in, I believe, the complaint, but certainly in the motions that have heretofore been heard concerning the King Sisters booking, and the other one?

The Court: That is true. There is an evidential feature [312] brought into the case on pre-trial, and at other periods in the history of the litigation, but the issue that the jury will be called upon to determine will be that of bands.

Mr. Christensen: It was for the purpose of showing the existence of the conspiracy by circumstantial evidence, your Honor.

The Court: I don't know just how far the rule of similar acts would go in a civil action of this type. I think we should confine it. I am not speaking now of the specific designation of so-called attractions other than bands that have been discussed between counsel and the court at pre-trial conferences, but so far as the issue to be determined by the jury is concerned, it would be confined to the band issue. It may be that the rule that is generally applicable in alleged conspiracy cases as to the introduction of similar circumstances would be applicable here, but, after all, the issue on that phase of the case will be the issue of an alleged conspiracy with respect to name

(Testimony of William McDonald)

bands. I am not going to permit too much deviation. As I recall, that was a general question. Will you read the question, please?

(The record was read.)

The Court: I think the other reporter probably has the original question.

Mr. Warne: May I suggest what it was, please?

The Court: Yes. [313]

Mr. Warne: It was that they went and tried to get Granville and the King Sisters as the attractions. That was the entire question.

The Court: Yes, that is too broad a question. I don't recall anything about the Granville incident in the pre-trial conferences.

Mr. Warne: There was none.

The Court: I specifically recall the King Sisters.

Mr. Christensen: May I refer to the affidavit in opposition to the motion for summary judgment?

The Court: I am not going to consider those, so far as the jury is concerned.

Mr. Christensen: All right. May I have a moment, then, to check our complaint?

The Court: Yes. The fifth allegation is the one.

Mr. Christensen: Page 6 of the complaint, sub-paragraph or paragraph (d) has to do with the King Sisters.

The Court: Yes. I am clear on that. I am not speaking of that.

Mr. Doherty: As your Honor says, that is merely evidentiary.

The Court: I think we will confine it to the issues and not permit the jury to deviate from the groove that

(Testimony of William McDonald)

the litigants have prescribed in the pre-trial conferences. Objections sustained. [314]

Mr. Christensen: May I inquire concerning the King Sisters, the conversation concerning that?

The Court: I think that is within the expanded situation that is disclosed by the pre-trial conferences.

Q. By Mr. Christensen: Mr. McDonald, in giving the conversation there and telling what was done, I want you to confine it to the conversation had, if any, concerning the King Sisters and bands, or, bands and orchestras.

A. Well, concerning the King Sisters, a price was set for their appearance—

Q. Wait, please. You can help us better if you will give us the conversation. Before you do, tell me this: You have already said the name of Bontia Granville came up. Was that just incidental, or was it something more than that? You can answer that "Yes" or "No." Was it just incidental?

The Court: How would he know?

The Witness: It was a supposition, yes.

Q. By Mr. Christensen: Now, will you confine your conversation there and omit any reference to any conversation concerning Bonita Granville, and limit it to conversations concerning the King Sisters, bands and orchestras.

A. A price was set for the appearance of the King Sisters.

Q. Who set that, sir? A. Mr. Later. [315]

Q. What did he say?

A. Well, he mentioned a price for the two parties concerned. We are forgetting Bonita Granville, so we are with the King Sisters now, and a price was mentioned,

(Testimony of William McDonald)

I don't know whether you want me to mention the price, and I thought it was a little too much.

Q. Just tell us what was said, and just limit it to the King Sisters.

A. They wished \$1500.00 for the King Sisters. I said it was too much. However, Mr. Finley overruled me, and that was as far as I knew on that one thing until I was told at a later date.

Now, so far as orchestras were concerned, we asked Mr. Barnet about the orchestra situation. Mr. Barnet said he would check into the validity, if any, or if they had a contract in force with Mr. Dailard he didn't know, but would check into it, and try to help us on the situation of securing bands.

Q. Did he say you could have the King Sisters for an engagement at Mission Beach?

A. In that conversation I did not hear him say they could.

Q. Was there any further conversation at that time, concerning bands and orchestras?

A. We went to lunch and— [316]

Q. Permit me to interrupt you. A. Yes.

Q. When you say "we" who is "we"?

A. Mr. Barnet, Mr. Finley, myself, and another party. I can't remember exactly who it was. I think a Mr. Thayer come over and joined us. I am not quite sure whether it was Mr. Thayer or Mr. Howard. I don't recall.

Q. That was at the Copper Kettle? A. Yes.

Q. That is the name of a restaurant in Beverly Hills?

A. That's right.

(Testimony of William McDonald)

Q. And at that place there was some conversation, was there, sir?

A. The conversation was to the effect, Larry said, "Can I go out and buy the bands direct?"

Mr. Barnet said, "There is no way for us to stop you from doing that." He said, "However, all contracts will have to come through us, as we have them under management contracts." That was just about the gist of the conversation, as I can remember it.

Q. Was there any band leader present at that stage of the proceedings?

A. As we walked up we ran into Jan Garber.

Q. What, if anything, happened with reference to him?

A. If I remember right, Larry said, Mr. Finley said, [317] "Can I see Jan?" And Larry said, "Wait until later." Now, I am not quite sure of that conversation. I think that is about the gist of it.

Q. You say that Larry Barnet said that to Mr. Finley?

A. Yes, sir.

Q. Did you have any further conversations with any of the defendants?

A. No, I don't believe I did, with the exception, as I have quoted before, of asking Mr. Bishop for bands.

Q. When did you do that next, sir?

A. I say it was sometime during the month I was working for Mr. Finley.

Q. How many times did you ask him for that?

A. I just asked him once. Then we let it go at that.

Q. Have you sold any of the Frederick Brothers bands to Mr. Dailard?

A. As an agent of Frederick Brothers?

(Testimony of William McDonald)

Q. Yes, sir.

A. Yes, I have sold them to—while I have been in the office, two bands have been sold to Mission Beach, yes, sir.

Q. They are?

A. Ina Rae Hutton and Georgia Auld.

Q. When was that, sir?

A. Ina Rae Hutton when I first came with the company. [318] It is about a year and three-quarters, a year, or a year and a half ago. Georgia Auld about three or four months back.

Q. Did you make those bookings directly with Mr. Dailard?

A. I tried to make them directly with Mr. Dailard, and Mr. Dailard told me I would have to see and call Mr. Bishop as he was handling the Pacific Square.

Q. Now, during the year 1945 can you tell us how many name bands Frederick Brothers Agency had here available to ballroom operators in the San Diego area, sir?

A. I think Mr. Shea answered that question yesterday by saying we didn't have any name bands.

Mr. Doherty: I think the witness should speak from his own knowledge.

Q. By Mr. Christensen: I want you to speak for yourself, John,—or Billy, I mean.

The Court: Let's address these witnesses properly instead of by the familiar terms.

The Witness: Will you repeat the question, please?

Q. By Mr. Christensen: Will you answer that question for yourself, sir, rather than by reference to Mr. Shea?

(Testimony of William McDonald)

The Court: We will have the original question read, please.

(The question referred to was read as follows:

“Q. Now, during the year 1945 can you tell us [319] how many name bands Frederick Brothers Agency had here available to ballroom operators in the San Diego area, sir?”)

The Witness: A. The name band category or, rather, as I would define a name band, frankly, I don't believe we have had any real name bands available. We have had many semi-name bands such as play at the Pacific Square.

Q. By Mr. Christensen: By the way, in your bookings there of those two bands with Mr. Daillard, did you have to split commissions? A. Yes.

Q. With the Music Corporation of America?

A. Yes.

Q. Now, then, you recall giving a letter to Mr. Finley under date of September 14, 1944, do you not, sir?

A. The date I don't remember. I know I sent him many letters.

Mr. Christensen: If I may have the letter, please.

Mr. Doherty: Here is another photostatic copy, and so far as I am concerned, you may use it.

The Court: You can use it if you both agree that it is a copy. In changing clerks here there is sometimes a little confusion.

Mr. Christensen: You agree I may use this photostat instead of the photostat which the clerk has marked?

[320]

(Testimony of William McDonald)

Mr. Doherty: Yes, it is agreeable to me. I think the reporter has temporarily mislaid the original. It is not here on the clerk's desk.

The Court: We will probably find it during the recess.

Mr. Doherty: It is agreeable with us if Mr. Christensen uses his copy.

The Court: Yes. The clerk will follow these exhibits and see that they are here.

The Clerk: I think that one is out in the reporter's room.

The Court: Will you locate them and see that they get back on your desk?

The Clerk: Yes.

Q. By Mr. Christensen: The signature "Billy" on this letter written on the stationery of Frederick Bros. Agency, Inc. under date of September 14, 1944, and which is a photostatic copy of the original, just as is Defendants' Exhibit D,—there appears a name written on it "Billy" over the typewritten name "Billy McDonald." Is that your writing, sir? A. Yes, sir.

Q. In that letter you state that you have available a certain list, or, a list of certain orchestras, Lawrence Welk and his Champagne Music. Are you familiar with that band? [321] A. Yes, sir.

Q. Was that available for any operator in the San Diego area during 1945?

A. Not, it was not available.

Q. Is that a name band?

A. It wasn't a nationally-known name band. It was a regionally-known name band.

(Testimony of William McDonald)

Q. Was Ina Rae Hutton and her famous orchestra available on the West Coast, particularly in the San Diego area, during the year 1945, sir? A. Yes.

Q. When was that?

A. Ina came out to—let me see—1945?

Q. Yes, sir.

A. Yes, she would have been available. I don't know the exact date she brought her band back into town, played a few one-nighters and broke the band up, but she would have been available for any dates we had before she broke the band up.

Q. Would you say that is a name band?

A. From the price received, I think it is acceptable as such.

Q. And George Paxton, was that available here?

A. During 1944 he wasn't available. Let me see.

Q. 1945? [322]

A. 1945 he was not available, no.

Q. Milt Britton, was he available?

A. He was available, and he played here.

Q. Where did he play?

A. He played my entire territory, which is eleven western states.

Q. Was he available to San Diego?

A. He would have been.

Q. What do you mean by "would have been"?

A. Well, if I had an occasion to book him down there, he would have been.

Q. Was he a name band or is a name band?

A. He was known in theatres, but he wasn't a name band with dance people.

(Testimony of William McDonald)

Q. You said in your letter you would like to do business on an exclusive basis. Were you referring there to bands or orchestras, sir?

A. May I read that paragraph?

Q. Surely.

(The document referred to was handed to the witness.)

Mr. Doherty: Let the record show, Miss Reporter, he is reading from Defendants' Exhibit D.

The Witness: Now, will you repeat the question, and maybe I can answer it.

Mr. Christensen: Will you read it, please? [323]

(The question was read.)

The Witness: A. I was referring to only attractions.

Q. By Mr. Christensen: The word "attractions," as you have used it here, sir, means what?

A. Individual personalities, small groups of national prominence through the medium of recordings or radio, stage and screen.

The Court: Read that answer, please.

(The answer was read.)

The Witness: Who have gained national prominence through the recordings.

Q. By Mr. Christensen: Does that refer to orchestras and acts or singers, or does it refer to just one of those groups?

A. It does not refer to orchestras.

Q. By the way, so that we will have it clearly in mind, when you use the term "name band," what do you mean by it?

A. Well, a name band is an orchestra that has gained national prominence through a certain style of music or certain individuality about the person fronting the band

(Testimony of William McDonald)

that has caused most people in the country to become curious about what it is, and therefore people go to see the band work; more people go to see one band work than they would another band. In other words, one band will draw more people than the next band, and the band that will draw five or six thousand dollars [324] a night can be assured it is a name band.

Q. Would it be a fair statement to say that by reason of advertising of the particular band that it has become a name band, if the advertising is nation-wide?

A. Not necessarily.

Q. When I said "advertising," through the making of records or playing of radio programs or other forms of exploitation? That is what I had in mind when I said "advertising." Is that a fair statement or not, Mr. McDonald?

A. Well, if a band has been on a national radio show, has made motion pictures in which they have been featured and not just a background, but have been featured on the screen billing, and if they have made one hit record, to be followed up by another hit record, to be followed up by another hit record, I believe you can consider them a name band.

Q. Now, then, in the year 1945 how many name bands did Frederick Bros. Agency have available to ballroom operators in the San Diego area?

A. In my definition of a name band I would say we had one name band, and upon call we had a very long list of semi-names.

(Testimony of William McDonald)

Q. Mr. McDonald, can you tell us how the booking is done of bands into ballrooms? Give us the outline, as to the manner in which that is done, sir. [325]

A. Well, are we speaking of one band in particular?

Q. No, tell us generally.

A. Well, generally it is by—if you have what you call a name band, why, you can phone the gentlemen up and they will make room for the band to play, because they know it will be a money-maker for them.

Q. In other words, you would phone a ballroom operator?

A. That's right, and tell them when the band will be available, and if it is a name that big, they will make room for it.

Q. Now, you have already told us "nationally-known." Does that mean they travel about? A. Yes.

Q. Let's take the band in some other part of the country. That is correct, the bands do travel cross-country, do they not? A. Yes, sir.

Q. All right. Let's start them some place in the East, or Middle West, or way down in New Orleans, and bring them west and show us how you do it.

A. If you have a booking out here on the West Coast for a band, a location engagement for six or eight weeks, and they are leaving another locality, say New Orleans, they might have a 21-day layoff period. Now, if the band leader wants to pick up some money, he can play a series of one- [326] nighters, that is, play a different engagement every night on the way to his location engagement.

Q. You make those bookings, do you?

A. Well, from New Orleans it would be handled from my Chicago office until it got to Texas or Denver, and

(Testimony of William McDonald)

I would pick the band up and bring it to the location engagement.

Q. Tell me what you mean by "I would pick it up"?

A. Each office has territories, so my Chicago office would—say I picked it up in Denver, they would book it up to a certain day, within 300 miles of Denver, and then on the following day I would attempt to book it in Denver, and on succeeding days at other places to bring it into my location engagement, which I had succeeded in getting for them.

Q. Do you go there personally to do that?

A. It is all done by phone calls, wires, and letters. In fact, I do business with lots of people I have never met.

Q. Do you have contracts in support of these commitments or not?

A. Well, I have even deviated—usually the office procedure is to have a wire of confirmation; after you make a deal on the phone, have the buyer send a wire of confirmation. But I haven't asked for a wire of confirmation in about seven or eight months, because if the people don't play fair with me, I don't play fair with them, because their word [327] is their bond and my word is my bond.

Q. What about remittances? How are they handled?

A. We usually ask for a 50 per cent deposit on a name band. We send a telegram, or, rather, send a contract prior to the band's appearance, and the promoter sends 50 per cent as a deposit of the price for the night, whether it be in cashier's check, money order, or personal check. If we recognize the promoter we let him send a personal check.

(Testimony of William McDonald)

Q. From wherever the ballroom operator happens to be located,— A. Yes, sir.

Q. —to your office in Beverly Hills?

A. Yes, sir.

Q. Now, during the war-time bands also traveled by air, didn't they? A. Yes.

Q. Tell us about that.

A. Well, during war-time there was an emergency existing where it was impossible at times to secure transportation by the medium of train or bus, due to the movement of troops, et cetera. So in order to co-operate with the Army and Navy morale, where the morale officers might have a very big problem in having a group of men living up in the hills, far away from everybody and seeing no one but each other, and away from their families, and not being overseas as they wanted to [328] be, most of them, it became increasingly necessary to move bands by Army and Navy transportation. So we co-operated in every way, and in lots of instances we would give them a band free, or we would make them pay if it was necessary to travel the band a further distance than prescribed by the International Musicians laws.

Q. And the booking agencies arranged that transportation?

A. We co-operated with the Army and Navy, yes.

Q. And got them to furnish the transportation for the bands? A. Yes, sir.

The Court: Mr. McDonald, did you say "International Musicians laws"?

The Witness: It would be the American Federation of Musicians.

(Testimony of William McDonald)

Q. By Mr. Christensen: That was the general practice among the agencies, was it, sir?

A. Yes, we all did it. It was more or less a matter of co-operating with the Army and Navy.

Mr. Christensen: You may examine, Mr. Doherty.

Cross-Examination

By Mr. Doherty:

Q. Mr. McDonald, you know something about the operation of that famous band known as the Billy McDonald band? [329]

A. I was familiar with it.

Q. You were the band leader, were you not?

A. Yes, sir.

Q. And you played here and in other sections of the United States as a band leader? A. Yes, sir.

Q. You are known as the Billy McDonald band here and across the country? A. No, sir.

Q. Didn't you play in other sections than Los Angeles?

A. I played in Seattle, San Francisco, Shreveport, Louisiana, and back to Los Angeles, and then I went to Honolulu.

Q. And it was known as the Billy McDonald Band?

A. That's right.

Q. And you were the leader? A. That's right.

Q. You were quite proud of it, weren't you? [330]

A. That remains dubious. Individually, yes; commercially, no.

Q. Were you with Mr. Finley when Henry Busse was engaged? A. Yes, sir.

(Testimony of William McDonald)

Q. On what date was that?

A. I believe most of the phoning took place from my office a couple of months or about six weeks prior to my going with Mr. Finley. Now, I won't say for sure, but I believe that was it.

Q. Six weeks before you went with Mr. Finley?

A. Yes, sir.

Q. That would be along about, then, the middle of November?

A. I won't say definitely. Let's say approximately.

Q. You were with Mr. Finley in the latter part of December, 1944?

A. Well, I can explain better by saying that Mr. Finley started to buying attractions as soon as he secured the lease on Mission Beach. If you could tell me when he secured the lease, then it was after that.

Mr. Doherty: I think that November the 8th the lease was awarded, was it not?

Mr. Christensen: I believe that is correct, sir.

Q. By Mr. Doherty: November the 8th, 1944, was approximately the date that Mr. Finley secured the lease. He began buying attractions immediately thereafter?

A. He began trying to attempt to set up his opening day. [331]

Q. Then was it immediately after that he began conversing with Henry Busse?

A. I wouldn't say immediately after. The first thing he had to do was to fix up the park. After he got that all out of his mind, then he started worrying about his attraction for opening. His opening attraction, that was his big problem.

(Testimony of William McDonald)

Q. After he got the lease, the first thing he concentrated on was remodeling the park?

A. A complete remodelization of the whole park.

Q. How long a time did that take?

A. I would say that took his time, setting plans, for about a couple of weeks; and then, after that, intermittently, why, he was on it all the time.

Q. Then, would you say it was a fair statement to say that Mr. Finley began about December the 1st, 1944 to take an active part in arranging for attractions, bands for his Mission Beach?

A. Well, I would say he levelled off about a week before that and really started trying to get attractions for Mission Beach.

Q. Was that about the time he commenced conversing with Henry Busse about engaging him for the Mission Beach?

A. The picture was that he attempted to get attractions from every agency that was of national prominence—not attractions—I would say a name band. [332]

Q. Now, if you remember my question, was it then around about December 1st that he attempted or started negotiations—

A. No; the latter part of November. He immediately started trying real hard when he found out it was going to be a difficult problem. Before that he had made inquiries.

Q. When did he begin to contact Henry Busse through your office or otherwise?

A. He never contacted Henry Busse through my office. He did not have an office in town, and we gave him some office space and let him use it.

(Testimony of William McDonald)

Q. And he telephoned from your office?

A. Yes, he did.

Q. To Henry Busse?

A. He telephoned to the agent of Henry Busse.

Q. And when was the deal closed that Henry Busse was to appear at Mission Beach? Give us the date as near as you can.

A. I believe about—we finally, through a series of events and through a big hunk of money, got Mr. Busse to appear about four weeks before, I believe, the official opening of the ballroom was.

Q. The official opening of the ballroom was February the 3rd, 1945.

A. Was that it? I don't know. [333]

Mr. Doherty: That is agreed, is it not?

Mr. Christensen: That is, sir.

Q. By Mr. Doherty: And then, you would say about January the 5th or 6th, 1945, that he finally closed the deal with Henry Busse to open?

A. When he was told that was the only band that was made available to us, and I don't know what bands were available.

Q. Now, you have had long experience in booking bands, have you not?

A. No, sir; I have not.

Q. Well, you have learned something during the past year in that respect.

A. I have learned a lot.

Q. And you just can't push a button and get a band on a day's or week's notice, can you?

A. You can get it on a 30-day notice.

Q. Depending upon the band? A. Yes.

(Testimony of William McDonald)

Q. These bands of prominence travel about the United States on bookings, do they not? A. Yes.

Q. And when they are making long trips, like from the East Coast or the central states into the Pacific Coast, they must be assured of an engagement long enough to pay the expenses of the trip here to this point and back again, do [334] they not?

A. That is usually the procedure.

Q. And when you have one of your bands on the East Coast or middle west, and you want to bring that to the West Coast, you must book them up for a period of weeks as an inducement for them to come? A. Yes.

Q. And that takes time, doesn't it?

A. It is according to how big the attraction is.

Q. I am speaking now about a band.

A. Or how big the band is—I will follow it through.

Q. Well, take a name band of 20, 25 or 30 pieces.

A. Well, I don't know how other offices work, but I know that we try to keep an equal number of bands in each territory with my organization, so that each office will have approximately the same income, if possible.

Q. But it takes time, does it not—sometimes weeks to line up a territory for a band in your area?

A. Well, a tour of one-nighters, it is according to how long the tour is. If you only have 14 or 15 days, the thing should be tied up in about 8 days.

Q. That is one-nighters? A. Yes, sir.

(Testimony of William McDonald)

Q. But where you are going to have a band to come and play at one place for a week, and then another place for a [335] week, and then another place for a weekend, that is, Friday, Saturday and Sunday, and then another place for a week, up and down the Coast, how long a time does it take to make those bookings, starting out from scratch?

A. What kind of a band, a name band or a semi-name band?

Q. Yes; we are only talking about bands here.

A. A name band, you book—well, if a band is coming out to do a picture, you usually have about a 45-day notice on a picture.

Q. Yes.

A. At which time you immediately start bringing the band out and, as gracefully as possible, getting out of contracts you have with other buyers, because you have already protected yourself by the 45-day clause of cancellation.

Q. That is a moving picture engagement. That is a name band. Now, what about a dance hall engagement; how much time must you have to line up a booking or a tour of a name band in your territory from Denver west, where you will keep them engaged for a time which will warrant you, as their agent, and the band leader, as the employer of the band, to come from the East Coast to the West Coast?

(Testimony of William McDonald)

A. Well, having dealt with most semi-name bands, I would say a name attraction—let's see; I will go back out—a name attraction, usually two months ahead of the thing.

Q. About two months ahead? [336]

A. Six weeks to two months.

Q. Yes.

A. Or you are not a very good operator.

Q. Can you tell us—and I want to use this next minute on this—when the band passes from a semi-name band into the prominence of a name band, just when that occurs?

A. Well, I think the best authority on that are the buyers. When you find every buyer in every part of the country wanting the band at the same time, then you have a name band.

Q. That is the determining factor?

A. That is one of the determining factors, the most important, I believe, from my point of view.

Q. That is when the buyer wants the band very badly—

A. When a group of buyers want the band; in other words everyone is clamoring for the band, then you can be assured that you have a name band.

Q. That is a name band. You have answered that question so promptly, I will take you on one more. You spoke about bands becoming name bands because they are on radio. Now, some of the bands that are on the radio

(Testimony of William McDonald)

are not dance bands, are they, and they have national prominence?

A. Well, the words "national prominence," I would have to know. There are lots of bands on the air that you could ask anybody who they are that is even musically minded and [337] they wouldn't know, although they are of some prominence, radio prominence.

Q. But aren't there some bands on the air that are not dance bands? A. Yes.

Q. And they may have national prominence?

A. I would say maybe about ten per cent of the bands on the air might have national prominence.

Q. That are on the air?

A. In the present day.

The Court: I think we will recess now, gentlemen.

The Witness: All right, sir.

The Court: Two o'clock this afternoon, ladies and gentlemen.

Mr. Christensen: 2:15.

The Court: Oh, pardon me just a minute. Mr. Christensen did ask yesterday. He said he had another appointment. So, if you are here at 2:15, but please be here at 2:15, not 2:20 or 2:17.

Please remember the admonition in the mantime.

(Whereupon, a recess was taken until 2:15 o'clock p. m. of the same day.) [338]

Los Angeles, California, Thursday, January 31, 1946.
2:25 p. m.

The Court: All present. Proceed.

I guess I am the one that should apologize. Isn't that right? It is now 2:25.

Mr. Doherty: Mr. McDonald, will you take the stand again, please?

WILLIAM McDONALD,

called as a witness by and on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Doherty:

Q. Mr. McDonald, I believe you had answered the last question. You testified in your direct testimony respecting the splitting of commissions. Do you know the Orrin Tucker band? A. Yes.

Q. I believe that was a band that was represented by your company, and they wanted to go to the M. C. A.?

A. That was before I was affiliated with the company.

Q. Before your time with the company?

A. Yes.

Q. That was a band upon which you are splitting commissions now, is it not? [339]

A. To my knowledge, no.

Q. To your knowledge, no. You mean that you do not know whether they are or are not, or, they are not?

A. To my knowledge, Music Corporation of America has the Orrin Tucker band under exclusive management contract.

(Testimony of William McDonald)

Q. And do not split commissions with you?

A. Not that I know of, no.

Q. You haven't had occasion to check the arrangements made between M. C. A. and your company with that band?

A. No, I have had no occasion at all.

Q. In other words, it is possible that you are splitting commissions and you would not know about it?

A. Very possible.

Q. Mr. Christensen spoke to you, or, rather, asked you on several occasions about bands available in the San Diego area in 1945. You never kept bands in what is known as the San Diego area at any time, did you?

A. A traveling band is a traveling band. They should be made available when requested, if you can make it available when it is requested; or, you can request that they book the band and make sure that you deliver the band.

Q. Yes. Your area is west of Denver?

A. Right.

Q. And you did have bands west of Denver that were available for use in 1945 by Mr. Finley at Mission Beach that [340] he did not use; isn't that right?

A. No, it is not correct.

Q. I thought I understood you to say this morning that you had some bands that were not placed at Mr. Finley's Mission Beach in 1945?

A. No. We didn't—so far as I can remember, during the summer of 1945 Mr. Finley was very well booked up with top semi-names and name bands, and there was no opening during the summer for anybody else to get in, I believe. I think I am quoting right. And at the time I had nothing available anyway.

(Testimony of William McDonald)

Q. In other words, knowing that he was booked fully during the spring and summer of 1945 you didn't route any of your bands so they would touch San Diego?

A. I had a request for a name band, the band of Georgie Auld, whom I could not deliver to him.

Q. That was the only exception?

A. That would be the only exception.

Q. That was a pretty good band, wasn't it?

A. I thought it was a good band.

Q. During the— I might go back a minute to clarify it. While you were there in your capacity as manager, the arrangement was that you were going to operate at Mission Beach during February, March, and up to May 11th on a two-night-a-week basis, was it not? [341]

A. That is right.

Q. Then beginning May 11th on up through and to probably October you were going to operate on a five- or six-night-a-week basis?

A. You must understand that was a proposed schedule. I left him after a month.

Q. When you left in early February, 1945, how far ahead did Mr. Finley have bookings on the two-night-a-week engagements up to May 11th?

A. He had intermittent bookings through.

Q. He had what?

A. He had bookings spaced on through, when they were available, and he had some holes to fill in.

Q. He had some holes to fill in?

A. Yes. In other words, he had, say, the first and second weeks booked, and he had the third and fourth weeks booked, and then he had the fifth and sixth open. [342]

(Testimony of William McDonald)

Q. And then, later, he filled in the entire summer engagement? A. Yes.

Q. During that period your company furnished him with Wingy Manone? A. Yes.

Q. That was on February 17th and 18th?

A. The dates I couldn't vouch for.

Q. How is that?

A. He did play for Mr. Finley.

Q. And then, later, on March 10th and 11th, you furnished him with Ada Leonard? A. Right.

Q. On March 31st and April the 1st you furnished him with Carlos Molina?

A. I am not vouching for the dates, but Carlos did play there.

Q. Without vouching for the date, you also furnished him with a band known as the Chris Cross?

A. Yes, sir.

Q. And also with Pinky Tomlin?

A. I can't remember whether Pinky played the Beach. He did play at another ballroom that Mr. Finley has under control.

Q. And other engagements were furnished by other [343] agencies? A. Yes, sir.

Q. That is, General Amusement and the William Morris Agency? A. Yes, sir.

Mr. Doherty: I think that is all, Mr. McDonald.

Q. By Mr. Christensen: None of these bands which you have just been asked about—

Mr. Doherty: Pardon me. There is one question, your Honor, I made my mind up I was going to ask him and I did not.

Mr. Christensen: Go right ahead.

(Testimony of William McDonald)

Q. By Mr. Doherty: In this matter of agency, each engagement that you make for a band leader to play at a particular dance hall is a separate contract for each engagement, is it not? In other words, you have A band playing in a particular place; you make a contract between A band and the dance hall proprietor; then B band comes in and you make another contract between the B band leader and the dance hall; in other words, in each instance it is a separate contract?

A. Yes; because, in each instance the band leader has to O.K. a job before it is filled.

Q. Yes.

A. We have no right to force a band leader to play.

Q. You cannot force him to play a job?

A. That is right. [344]

Q. Under the American Federation of Musicians or under the Musicians' Union? A. That is right.

Q. Each engagement is a separate and distinct contract? A. That is right.

Q. And each approved by the individual band leader in each instance, or when he authorizes you to do it for him? A. That is right.

Mr. Doherty: Thanks.

The Court: Proceed, Mr. Christensen.

Re-Direct Examination

By Mr. Christensen:

Q. None of these bands which you have just named are name bands, are they, sir?

A. Some of them are not even semi-names.

Q. For example, you were asked if you furnished Wingy Manone—Manone, I believe, is the pronunciation?

A. Yes, sir.

(Testimony of William McDonald)

Q. You know at that time Pacific Square was playing Ted Lewis, don't you?

A. Yes. I was fairly well set up with the policy down there.

Q. And you know that part of the time when Mr. Finley was playing Sally (Sully) Mason—Sully Mason it is—he was also playing against Ted Lewis [345]

A. In all probability. I don't know for sure.

Q. You furnished Ansil Hill to Mr. Finley?

A. No, sir.

Q. You furnished Chris Cross? A. Yes, sir.

Q. And do you know that at that time that Music Corporation of America furnished to the Pacific Square Charles Burnett?

A. Yes, sir. Chris Cross was bought under a circumstance that Mr. Finley couldn't get bands at the time, so he just bought the band to fill in the dance time. He had to have the hall open and he had to have dance music for the evening; so he bought the dance band. There was no sale; it was just a buy.

Q. And Charles Burnett is one of the top bands in the country?

A. One of the leading bands in the country.

Q. You have had an opportunity to observe Mr. Finley's operations of ballrooms? A. Yes.

Q. What is your opinion of him as a ballroom operator?

Mr. Doherty: Just a minute. I think I will object on the ground that this witness is not qualified, no foundation laid.

The Court: I think he is qualified to give an opinion [346] on that, but that really is not a matter of

(Testimony of William McDonald)

opinion; that is a factual matter. What he did in the management or proprietorship of a ballroom; that is not a matter of opinion. The way the question is framed is objectionable. Sustained.

Q. By Mr. Christensen: Did you observe Mr. Finley's operation of Mission Beach? A. Yes.

Q. What was it?

A. Well, he came out and took a dance hall that was very badly deteriorated as to the cash money up to that time. I understood it was for the people of San Diego, as well as from the personal point of view, making the place more beautiful, to make it attractive for big bands to play there and to give people a reason to go into a place that didn't look as bad as it did.

Q. Did he do that? A. He did that.

Q. And after he had completed the work on the Mission Beach ballroom, would you say then that it was a first-class ballroom?

A. Yes, I would say it was; and prior to that he took another ballroom and made it a very nice ballroom, which was the Trianon, prior to coming into Mission Beach.

Q. In looking over his list of attractions I notice one of the names of the persons you say would be available to [347] him was Bolita? A. Right.

Q. Bolita is an ice skater, isn't she?

A. She is a dancer. She was doing a dancing act in vaudeville at the time.

Q. Is it good practice to have such a person appearing with a band in a ballroom?

A. Well, at the time, as stipulated before, Mr. Finley was having a hard time getting bands, so the only other thing he could turn to, to have a reason for people to

(Testimony of William McDonald)

travel out to the beach would be to get some theatre star that somebody would like to see in person. At the time, Bolita just completed a picture and they gave her a lot of publicity on it, and there might have been a reason for him to book her, though he didn't book her because he didn't think her draw was big enough.

Q. You said that Mr. Finley was booked up for a period of time, of course, intermittently? A. Yes.

Q. None of those were with name bands, were they, at that time?

A. Well, prior to his summer engagements, no; he played what he could obtain.

Mr. Christensen: I believe that is all; and thank you very kindly. [348]

Re-Cross Examination

By Mr. Doherty:

Q. Mr. McDonald, you were not at the Mission Beach ballroom at any time after Mr. Finley began to operate it as such, were you?

A. I was very close to Mr. Finley up—

Q. No. Answer my question. Were you there, employed there in any capacity after Mr. Finley began operating it as a ballroom? A. No, sir.

Q. When you wrote this letter, which is Defendants' Exhibit D, did you have the same opinion of the orchestras that you have now expressed on the stand?

A. Yes. I expressed on the letter here, expressed—it is nothing about the orchestras. I have name attractions.

Q. I turn to the next sheet, which is the first two lines following the list of the orchestras, and ask you about the following sentence: "The foregoing is a partial list of some of our larger names, and when the time comes

(Testimony of William McDonald)

we can give you many more to choose from." Now, were not these your larger names that were represented by your agency?

A. I see one of our top bands represented there.

Q. Then, your statement to Mr. Finley that "This is a partial list of some of our larger names," was not a correct statement at that time? [349]

A. Yes; it was a correct statement, because at that time we were in litigation which, if it failed, would have given us control of many larger names.

Q. In other words, at that time you did not have other large names represented by your company?

A. At that time, we had, with the exception of one, no names represented by our company; a few semi-names and a lot of orchestras.

Q. Then, did you mean what you said here in this letter to Mr. Finley: "You, of course, realize we are one of the four largest agencies in the business today?"

The Witness: Read the rest of it.

Q. Oh, fine. "And the above is only a partial list of the attractions we can offer you when the time warrants," the above being the list of all the bands.

A. I conclude that sentence. It says right here: "Also I am listing a few of the names that will be available to you:" and there is listed a few movie stars. And then I say: "Larry, I hope the above list, which is only a partial list of the artists,"—which it was. We have Allan Jones to our contract and we have several names.

Q. Are you not one of the largest agencies in the business? A. I am quite sure we are.

Q. You are? [350] A. Yes.

(Testimony of William McDonald)

Q. And General Amusement Corporation is another?

A. Yes, sir.

Q. And William Morris Agency the third?

A. Yes, sir.

Q. And Music Corporation of America fourth?

A. Not in that order.

Q. Of the big four?

A. I would say that, sir.

Q. Yes. And at that time you did not have any more talent than you said here on the stand today; that was your largest selection of talent that you had available?

A. Within our grasp at that time; you are right.

Q. But after that, your situation improved?

A. We were quite sure it would improve. However, some litigation fell through, which it did not improve.

Mr. Doherty: That is all.

Re-Direct Examination

By Mr. Christensen:

Q. Oh, Mr. Doherty asked you if your employment—if you were there employed after one month. But were you down there at times?

A. I was down there regularly, yes, two or three times a week, because I was booking bands at his other spot of amusement, which was the Trianon ballroom. [351]

Q. So that even after you ceased working for him, you continued to visit with him once or twice a week at the Mission Beach ballroom?

A. I would say once or twice a week.

Mr. Christensen: That is all, Mr. McDonald.

Mr. Doherty: That is all.

Mr. Christensen: Thank you. Mr. Charles Wick, please.

CHARLES WICK,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: Charles Wick.

Direct Examination

By Mr. Christensen:

Q. Mr. Wick, by whom are you employed?

A. The William Morris Agency.

Q. That is one of the agencies we have just been speaking of here, isn't it? A. Yes.

Q. And your position with the William Morris Agency, sir, is what?

A. I am in charge of the orchestras at their agency.

Q. For what period of time have you been so employed by the William Morris Agency, sir? [352]

A. About 15 months.

Q. Can you tell me the number of name bands which you had available to operators in the San Diego area during the year 1945?

A. We had three white name bands and two colored name bands, a total of five.

Q. Will you name them for us, please?

A. Henry Busse, Vaughn Monroe, Artie Shaw are the white bands; Count Basie and Duke Ellington are the colored bands.

Q. Artie Shaw was not with you the entire year 1945, though, was he?

A. No. He left us in September, 1945.

(Testimony of Charles Wick)

Q. When Artie Shaw left you or your organization, do you know by whom he became associated?

A. Yes; he became associated with M. C. A.

Q. Music Corporation of America? A. Yes.

Mr. Christensen: You may examine, counsel.

Cross-Examination

By Mr. Doherty:

Q. What area does your agency cover, the San Diego office—rather, the Los Angeles office?

A. The Beverly Hills office covers the western states west of Denver; approximately Montana, Utah, Washington, [353] Oregon, California, Nevada, Arizona.

Q. During 1945 did the Army and Navy make very heavy demand on you for bands?

A. You mean to appear at their camps?

Q. Yes; where you had to fill in engagements for the Army and Navy?

A. We never had to fill engagements for the Army and Navy. They were always requests, and usually they were desirable from the standpoint of facilitating the orchestras' transportation during which time transportation was very difficult to obtain.

Q. Did you ever use them in the Army and Navy camps on Saturdays and Sundays?

A. No.

Q. In other words, you would use the Army and Navy for transportation to get them into the area, and then you performed for the Army and Navy weekday nights?

A. Usually, yes. It would depend upon the particular camp's position in the particular direction that the orchestra was traveling.

(Testimony of Charles Wick)

Q. Do you have any classification in your office as the San Diego area or the area in which bands are available? A. Not officially.

Q. In other words, you have bands available anywhere in the United States if you have spots at which to put them that will justify their moving? [354]

A. They can be made available, yes.

Q. In other words, sometimes you have more bands in New York than you do in Los Angeles, and other times you may have more bands on the West Coast than you have in the Chicago area?

A. It would be possible. Ordinarily, no.

Q. But the bands move about?

A. Yes, they do.

Q. And you try to keep them booked the best you can, but there is no assurance at any time that you will have a certain number of bands in any given area?

A. There is no assurance other than what we choose to do about the demand.

Q. Some bands like to play on the Coast and others like to play in the East?

A. That would not be the prime consideration. They like to play where they can make the most money and contribute to their career.

Q. In other words, wherever you have enough engagements or make them a good enough offer, they will come?

A. If it is desirable from the standpoint of advancing them as an economic functioning unit.

Q. Did you say that Monroe is one of your bands?

A. Yes, sir, he is.

(Testimony of Charles Wick)

Q. Do you know where that band was playing on February [355] 3rd and 4th, 1945?

A. I believe they were at Pacific Square Ballroom in San Diego.

Q. You represent Henry Busse, too, don't you?

A. Yes.

Q. Where was that band playing on February 3rd and 4th, 1945?

A. I believe, if those are the correct dates, if that was a week-end, he was playing in Mission Beach Ballroom at San Diego.

Q. In other words, the Monroe band was playing over at Mr. Dailard's place, at Pacific Square? A. Yes.

Q. On that week-end? A. Yes.

Q. And your represent the Monroe band, don't you?

A. Yes.

Q. And you had the other band over at Mission Beach that same week-end? A. Yes, sir.

Q. In other words, you had your organizations in the two top places in San Diego that week-end?

A. Yes.

Mr. Doherty: That is all. [356]

Re-Direct Examination

By Mr. Christensen:

Q. I would like to inquire, Mr. Wick, you are acquainted with the Vaughn Monroe band, aren't you?

A. Yes.

Q. The Vaughn Monroe band has as an integral part of it the Norton Sisters, does it not? A. Yes.

Q. Tell me what they are.

A. The Norton Sisters is the name for four girls who sing as an attraction with the Vaughn Monroe orchestra.

(Testimony of Charles Wick)

They sing as a unit, and they sing with the band. They are one of the featured groups in the organization.

Q. Are you also acquainted with the King Sisters, an attraction? A. Yes.

Q. Do you know that they were playing also at the same time and with the same band at Pacific Square?

A. Yes.

Q. Do you know how Mr. Finley happened to have Busse? Do you know anything about the deal?

A. I remember that at that particular time Henry Busse had just closed at the Palace Hotel in San Diego.

Mr. Doherty: In San Francisco.

Q. By Mr. Christensen: In San Francisco. [257]

A. Yes. I am sorry. I didn't mean to move that hotel. And he was feeling very, very sick. I believe he had an infection and wanted to take some time off, and I believe about ten days or two weeks before the engagement in San Diego the amount of money that Jack Flynn, who at that time had the band under contract, was able to secure for him was the inducement that got him to forego his period of recuperation or vacation and play for him down there.

Q. For Finley? A. Yes.

Q. Did you split any commissions on the booking of Busse with Finley?

A. Split commissions with whom?

Q. With anybody at all.

A. Not to my knowledge.

Q. Did you have to on the Monroe booking?

Mr. Doherty: That would call for his conclusion, your Honor, as to whether or not he had to.

(Testimony of Charles Wick)

Q. By Mr. Christensen: Well, did you?

A. Well, I don't— I know they did. However, I myself did not make that arrangement.

Q. Do you know who the Monroe booking was made with? In other words, was it made with Bishop, or was it made direct with Dailard?

A. That again I do not know. I am reasonably sure it [358] was made with Bishop, but, again, I did not make it myself at that time.

Mr. Christensen: I see. Thank you very much, Mr. Wick.

Mr. Doherty: That is all.

Mr. Christensen: You may step down.

(Witness excused.)

Mr. Christensen: I want to call Hal Howard, one of the representatives of M. C. A., for cross-examination at this time.

HAL HOWARD,

called as a witness under Rule 43-B of the Rules of Federal Procedure, having been first duly sworn, was examined and testified as follows:

Cross-Examination

The Clerk: Will you state your name, please?

The Witness: Harold Howard.

By Mr. Christensen:

Q. Mr. Howard, you are employed, are you not, by Music Corporation of America?

A. That is correct.

Q. And you have been now for what period, sir?

A. Since September, 1944.

(Testimony of Hal Howard)

Q. Do you recall the booking of Paul Martin by Larry Finley? A. I do. [359]

Q. Was that in January of 1945, sir?

A. I believe it was.

Q. Did you have anything to do with it?

A. I did.

Q. What did you have to do with it?

A. I made the arrangements with Mr. Finley for the booking of the band.

Q. Did you prepare the contract, sir?

A. I did.

Q. Was it on a Music Corporation of America form?

A. It was not.

Q. What form was it on?

A. American Federation of Musicians.

Q. Why, if you know, wasn't it on a Music Corporation of America form?

A. I was requested by Mr. Barnet of our band department to put it on a form of the American Federation of Musicians.

Q. Do you recall the conversation?

A. I don't recall the exact conversation. I was just advised by him to put it on that type of form.

Q. He did not tell you why? A. He did not.

Q. Did he also instruct you to tear off the edge of the Music Corporation of America's photographs, the photograph [360] publicity stills, and the name or the initials "M. C. A."? A. He did.

Q. Did you do it?

A. Yes, I advised the publicity department to do that.

Q. That is, you did that before furnishing them to Mr. Finley? A. That is correct.

(Testimony of Hal Howard)

Q. Did Mr. Barnet say to you and to Mr. Finley at that time that he wanted you to take the name "M. C. A." or the initials "M. C. A." off because he did not want to get in wrong with Mr. Dailard?

A. I am not sure of that. I don't recall a conversation to that effect at all.

Q. Do you know if that band was offered to Dailard?

A. The band had previously played for Wayne Dailard?

Q. How long before that time, sir?

A. I am not aware of that.

Q. In the make-up of a name band, there are many factors, are there not, sir?

A. I would say there are.

Q. And some of those would be the general appearance of the band, that is, whether it is presented in an attractive manner, the way in which the solos and specialties are prepared, so that they would be shown to the best advantage?

A. That would be possible. [361]

Q. And would you include within that the costumes or uniforms?

A. They might also contribute to that.

Q. Would you not say that that would be a very definite part, or, a definite part of that?

A. It wouldn't be the predominant part. It could be a part of it.

Mr. Christensen: That is all I wanted to ask you on cross-examination, sir.

Mr. Doherty: Just two or three questions of this witness, so he will not have to come back again.

(Testimony of Hal Howard)

Re-Direct Examination

By Mr. Doherty:

Q. Mr. Howard, you are familiar with the Music Corporation of America form of contract with dance halls? A. I am.

Q. And you are familiar with what is known as the Musicians Union form of contract? A. Yes, sir.

Q. Now, is there any difference between the contents of the contract, one from the other?

A. No, the contents are identical, the only difference being that the form used by Music Corporation of America, or any agency, has their name printed on the top.

Q. The wording of the contract is identical? [362]

A. That is correct.

Q. Now, the Martin band that you talk about is a band which has a contract authorizing M. C. A. to represent it? In other words, it is a band that is represented by Music Corporation of America?

A. That is correct.

Q. It was placed at one time in the Pacific Square Ballroom, and the incident you are now speaking about is where you placed it in Mr. Finley's ballroom?

A. That is correct.

Mr. Doherty: That is all.

Re-Cross Examination

By Mr. Christensen:

Q. Isn't that the only instance that you recall where a contract was prepared on an A. F. of M. form?

A. That is my only experience of that nature.

Mr. Christensen: Thank you.

I would like at this time, your Honor, to introduce the deposition of

KENNETH LATER,

who was an employe of Music Corporation of America, and who is now not available here.

Mr. Doherty: May I have a moment on that, if you please, your Honor?

Mr. Warne: Here it is, Mr. Doherty.

The Court: The original is here in the file. I don't know whether that one was filed here or not. I don't [363] remember that deposition.

The Clerk: Kenneth Later?

Mr. Christensen: Yes, sir.

The Clerk: Yes, it is.

The Court: Do you want to read it all, Mr. Christensen?

Mr. Christensen: Yes, I think so, to give the continuity of it. May I ask Mr. Jaffe to read it, please?

Mr. Doherty: I don't know what your Honor's custom is. Shall he sit in the witness chair?

The Court: Yes. One of you can take the court's copy, if you desire, and follow it by question and answer.

Mr. Christensen: Will you do it, Mr. Karp? You take my copy and read.

The Court: You can take the court's copy. It doesn't make any difference. Were there any corrections? I don't remember whether there were.

Mr. Christensen: I don't remember any, your Honor.

The Court: If there were any, they would be noted in the original, and you can call attention to it, Mr. Christensen.

(Deposition of Kenneth Later)

(The deposition referred to was read by Mr. Jaffe in words and figures as follows, to-wit:)

Mr. Jaffe: This is direct examination by Mr. Desser:

"Q. Mr. Later, where do you reside?

"A. 200 West 54th Street.

"Q. That's New York City, is it not? [364]

"A. Yes.

"Q. Do you have a telephone there?

"A. Yes.

"Q. What is the telephone number?

"A. Circle 7-1130.

"Q. Where are you now employed?

"A. The William Morris Agency.

"Q. What is the nature of your present employment?

"A. I am a theatrical agent.

"Q. Were you ever employed by the Music Corporation of America?

"A. Yes.

"Q. Between what dates were you employed by the Music Corporation of America?

"A. I left the employ of the Music Corporation about February 1st or 10th of 1945.

"Q. For how long prior to that date were you employed by them?

"A. About ten months.

"Q. And in what office were you employed?

"A. In the Beverly Hills office.

"Q. Beverly Hills, California?

"A. Yes.

(Deposition of Kenneth Later)

"Q. In what capacity were you employed by the [365] Music Corporation?

"A. As a theatrical agent. I booked talent into theatres, night clubs—

"Q. Acts and attractions—is that generally what you had charge of?

"A. Yes.

"Q. And your duties generally were booking house acts and attractions into the various places of entertainment; is that true?

"A. Yes.

"Q. Do you know the plaintiff, Larry Finley?

"A. Yes.

"Q. How long have you known Larry Finley?

"A. I think since about the first of the year, perhaps a little before; I don't remember exactly the date.

"Q. You are talking about 1945, aren't you?

"A. Yes.

"Q. Where was it that you first met Larry Finley?

"A. At the office of M. C. A.

"Q. In Beverly Hills, California?

"A. Yes.

"Q. Did you have a discussion with Larry Finley at that time?

"A. Yes. We discussed—

"Q. Just answer that Yes or No. [366]

"A. Yes.

"Q. Who was present during that conversation?

"A. I think Hal Howard.

"Q. Who is Hal Howard? What is his employment?

"A. Hal Howard was in the Band Department of M. C. A.

(Deposition of Kenneth Later)

"Q. Likewise in the Beverly Hills office?

"A. Yes.

"Q. Now, can you relate the conversation that you had with Larry Finley at that time, on the occasion of your first meeting.

"A. We discussed some attractions for the Mission Beach Ballroom.

"Q. What attractions did you discuss?

"A. We discussed a great number of attractions and, from the attractions we discussed, we came down to a few that might be possibilities.

"Q. Will you relate as nearly as you can the conversation that took place between you and Larry Finley and Hal Howard, if Howard was present during the conversation at that time?

"A. Well, this is not by any means an exact relating of the conversation, since I wouldn't remember that. However—

"Q. (Interposing) The substance of it will be [367] sufficient, Mr. Later.

"A. We discussed the putting in of box-office attractions at the Mission Beach Ballroom.

"Q. May I interrupt just a moment. Before you go on with the conversations, will you tell us just what you mean by an attraction?

"A. I would describe an attraction as one which would increase the box-office receipts.

"Q. Can you give us an example of what you consider an attraction?

"A. As we are discussing it here, I would say any good act is an attraction. However, what I am talking about here is an attraction which would have some value as attracting business.

(Deposition of Kenneth Later)

"Q. You mean a theatrical act or attraction?

"A. Yes.

"Q. Or theatrical entertainment. Is that true, Mr. Later?

"A. Yes.

"Q. And one that would attract box-office receipts would be something like Sinatra or Bing Crosby?

"A. Yes.

"Q. You would call those attractions; is that right?

"A. Very great attractions.

"Q. The King Sisters? [368]

"A. Well, they are an attraction, but not comparable with Sinatra or Crosby.

"Q. Now, do you remember whether or not anyone was with Larry Finley during the time of this conversation?

"A. You mean besides Hal Howard?

"Q. Yes.

"A. No, I don't.

"Q. All right. Now go ahead with the conversation, Mr. Later.

"A. We discussed many attractions, and among the attractions that we discussed were the King Sisters, and Larry O.K.'d the booking of several of these attractions.

"Q. Mr. Later, may I interrupt. To make your evidence permissible it is necessary for you to say 'Mr. Finley said that', 'I said that.' If you will just give us the substance of what Mr. Finley said and what you said, that is what we want; not the ultimate conclusion that

(Deposition of Kenneth Later)

was reached, but the conversation that led up to the ultimate decision. Do you follow me?

"A. Yes. Well, I had a list of all of the M. C. A. attractions, and also some other people's attractions, who might have been available for engagements at Mr. Finley's ballroom, and we discussed them and agreed on—

"Mr. Desser: Off the record— [369]

"(Discussion off the record.)

"A. (Resuming) Well, Mr. Finley told me that he was most anxious to buy some attractions to bring some box-office value, since he had been unable to buy bands with any great name value, and that the combination of acts and bands might bring the result that he felt he might not obtain without them. Mr. Finley, and I and Hal Howard went over quite a list, a large list, of names; from these Mr. Finley agreed that several of these would be acceptable to him.

"Q. By this list you refer to you mean a list of attractions for whom Music Corporation of America was the booking agent?

"A. Yes.

"Q. All right, now continue.

"A. Most of all Mr. Finley was anxious to get Sinatra, and when we found it impossible to get Sinatra we went on to several of the other attractions, and we finally arrived at the availability of two acts that were acceptable to Mr. Finley, they being the King Sisters and Bonita Granville.

"Q. I see. What discussion took place between you and Mr. Finley concerning the King Sisters and Bonita Granville.

"A. 'Honestly don't remember that discussion. [370]
I remember the final result.

(Deposition of Kenneth Later)

“Q. Just give us the substance of the conversation, as nearly as you can remember it.

“A. I remember that I suggested that both attractions be used on one week-end, and Mr. Finley said that he felt they would be too expensive for him, and so it was agreed that we would try to get the King Sisters for the date that he wanted them. I don’t remember the exact date—some date in February.

“Mr. Ross: May I interrupt? Was this all discussed at the same conversation that you had at that time?

“The Witness: Oh, no; as a matter of fact, we had a couple of telephone conversations.

“Mr. Ross: Well, I want to keep this record straight. If we are talking about the first conversation, we only want what happened at that meeting.

“Q. During the first conversation.

“A. Well, I would say the first conversation was completely limited to a discussion of people whom Mr. Finley would find acceptable if they were available and satisfactory financial arrangements could be made.

“Q. And did Mr. Finley at that time give you a list of attractions which might be satisfactory to him, the names of which he selected from the list that you showed him? [371]

“A. Yes.

“Q. And included among that list that he gave you were the King Sisters and Bonita Granville; is that right?

“A. Yes.

“Q. The King Sisters is what kind of an act?

“A. The King Sisters are a singing act.

“Q. A trio, is it not?

“A. No; four girls.

(Deposition of Kenneth Later)

"Q. Four girls?

"A. Yes.

"Q. The King Sisters have made records, have they not?

"A. Yes.. They were formerly featured with Alvino Rey's band.

"Q. And they have been featured in theatres throughout the country, have they not?

"A. Yes.

"Q. And night clubs?

"A. Yes.

"Q. And they have great public acceptance, have they not?

"A. Yes, I would say so.

"Q. When did you next discuss the King Sisters with Mr. Finley? The King Sisters and Bonita Granville?? [372]

"A. Well, that too I don't remember exactly—when next. However, Mr. Finley went back to San Diego, and we telephoned him perhaps two or three times and discussed the possibilities of deals being consummated.

"Q. Do you remember the conversations that you had with Mr. Finley at that time?

"A. Not exactly the conversations.

"Q. Just the substance of the conversations.

"A. I do remember that it was agreed that Mr. Finley would buy the King Sisters.

"Mr. Ross: Now, wait. May I suggest that we get this thing in sequential order? I think these conversations, even though not as to exact date, should be fixed by some comparative means so that you know when, after this first conversation, we now get to the point where the

(Deposition of Kenneth Later)

witness is discussing what he in substance has said they agreed to.

“Q. Well, now, the first conversation that you had with Mr. Finley was at the M. C. A. office in Beverly Hills?

“A. Yes.

“Q. And thereafter you telephoned Mr. Finley in San Diego. Would you say that was a day or two after the first conversation?

“A. Yes. [373]

“Q. All right, now. What did you say to Mr. Finley and what did Mr. Finley say to you over the telephone at that time?

“A. I am in the same position: I just don't remember the exact conversation.

“Q. Just the substance of the conversation.

“A. However, I told him that the thing he was most interested in we could not make a deal for—that was Sinatra. I told him that there was a very good possibility of making a deal with Bonita Granville and the King Sisters. I think there were a couple of other people who were also available and who would have gone down and played it. But it was agreed that these few, besides the King Sisters and Bonita Granville, might be the best choice.

“Q. I see. Was a price quoted to Mr. Finley at that time?

“A. Yes. You mean for the King Sisters?

“Q. Yes, the King Sisters.

“A. Yes; I told him that I thought a deal could be made for fifteen hundred dollars.

(Deposition of Kenneth Later)

"For what period of time?

"A. I believe it was two days.

"Q. And do you remember the approximate date of their appearance in San Diego? [374]

"A. I think about the 10th of February.

"Q. Did Mr. Finley agree to hire the King Sisters at the fifteen hundred dollar rate?

"A. Yes, he did.

"Q. And did he tell you at that time to have contracts prepared and forwarded to him?

"A. Yes.

"Mr. Ross: Pardon me. When you say 'at that time', you are referring to the second conversation, which was a conversation had by telephone to Mr. Finley in San Diego?

"Mr. Desser: That is right.

"Mr. Ross: Is that the witness' recollection too?

"The Witness: Well, I don't honestly know either. I just know that I did talk to him and that he said he would confirm the booking, and to arrange for the booking of the King Sisters at the Mission Beach.

"Q. And for you to prepare the contracts and forward them to him; is that true?

"A. Yes; I would imagine so, yes.

"Q. Now, Mr. Later, did you thereafter communicate with the King Sisters?

"A. Yes; I talked to—I telephoned the King Sisters.

"Q. And which of the King Sisters is it that you talked to? [375]

"A. I don't remember which ones I talked to. I talked to two of them, as a matter of fact, one of them

(Deposition of Kenneth Later)

being away at the time. I think was Yonne that was away—I'm not sure.

"The Witness: (To Mr. Barnet) Which is the one that is married to Alvino Rey?

"Mr. Barnet: Louise.

"A. (Resuming) That's right—Louise. I called Louise's house, but she was away in Chicago at the time, so I talked to Yvonne and to one of the other sisters too.

"Q. And did you tell these two sisters that you had this possible booking with Larry Finley?

"A. Yes.

"Q. And did you tell them that the price was fifteen hundred dollars?

"A. Yes.

"Q. And did you tell them that their appearance would be required at the Mission Beach Ballroom at San Diego on or about February 10th?

"A. Yes.

"Q. For a two-day show?

"A. Yes, I did.

"Q. And what did they say?

"A. They agreed.

"Q. They agreed to accept the booking; is that right? [376]

"A. Yes.

"Mr. Ross: Just a moment. I move to strike out both the question and the answer. That is hearsay so far as any of the defendants in this case are concerned. I don't see how this witness can say anything concerning that—what he said or what was said with the King Sisters.

(Deposition of Kenneth Later)

"Mr. Desser: We have noted your objection, Mr. Ross.

"Q. Thereafter what, if anything, did you do in connection with this matter?

"A. Well, just about that time I was preparing to come to New York for a month's trip. I went in to see Larry Barnet—he was the head of the department and my actual superior—and I went in and told Mr. Barnet about it.

"Q. You are referring to the Mr. Barnet who is sitting in this room at this time, are you not?

"A. Yes.

"Q. All right, proceed, Mr. Later.

"A. I then turned all of the things which I had pending or in progress of negotiation over to Mr. Barnet to take care of while I was away.

"Q. You told Mr. Barnet that the King Sisters had confirmed the booking? [377]

"A. Yes.

"Q. You told him that Mr. Finley had agreed to accept the booking?

"A. Yes.

"Q. And you told him that Mr. Finley was waiting for the contract?

"A. Well, it was a confirmed booking; that would be a natural result of a confirmed booking.

"Q. Since you were going to New York, you asked Mr. Barnet to complete the arrangements; is that true?

"A. Yes.

"Q. Now, shortly thereafter you left for New York, did you not?

"A. I left on January 19th.

(Deposition of Kenneth Later)

"Q. And when did you return from New York?

"A. About three or three and a half weeks later.

"Q. When you returned from New York did you determine whether or not the King Sisters ever appeared at the Mission Beach Ballroom?

"Mr. Ross: I move to strike it; that's immaterial.

"Mr. Desser: Your objection is noted, Mr. Ross.

"A. I knew that they hadn't appeared at the Mission Beach Ballroom.

"Q. Had not?

"A. That's right. [378]

"Q. Do you know whether or not they appeared at the Pacific Square Ballroom in San Diego?

"A. Yes, I know that they did appear there.

"Q. Do you know that the Pacific Square Ballroom was at that time owned and operated by one Wayne Dailard?

"A. Yes.

"Q. Do you know approximately when they appeared at the Pacific Square Ballroom?

"A. I think about the 1st of February. I am not sure of that.

"Q. Do you know at what price they appeared at the Pacific Square Ballroom?

"A. No, I honestly don't.

"Q. Do you know how many days they appeared at the Pacific Square Ballroom?

"A. I think the booking was the same; I think they were all two-day bookings at the Pacific Square.

"Q. Mr. Later, in your work with Music Corporation of America, in charge of the acts and attractions

(Deposition of Kenneth Later)

department there for ten months, did Pacific Square ever book any acts or attractions during that period?

"Mr. Ross: Just a moment. I want to make an objection: I move that that is immaterial and has no bearing upon any point in issue in this case; whether or not they booked any other attractions would not be [379] relevant or pertinent to any of the issues in this case.

"Mr. Desser: Your objection is noted.

"(To the witness): You may answer the question.

"A. Well, they steadily booked bands as attractions; I don't recall them booking any acts.

"Q. I see. The King Sisters, of course, is an act; it is not a band attraction. Is that right?

"A. Yes.

"Q. To your knowledge, Pacific Square never booked an attraction similar to the King Sisters?

"A. Not during the time I was with M. C. A.

"Q. Either before you left for New York or after you returned from New York, did you have a conversation with anybody in the Music Corporation of America office concerning the booking of either bands or attractions in the Mission Beach Ballroom?

"A. Are you referring to M. C. A.?

"A. That's right, sir.

"Q. At M. C. A.?

"A. That's right, sir.

"Mr. Ross: I move to strike that question on the ground that it is completely incapable of an intelligent answer. He may have had conversations of any kind over a period of a year. [380]

(Deposition of Kenneth Later)

“Q. You understand the question, don’t you, Mr. Later?

“A. Well, I understand you are asking whether I had any conversations with anyone at M. C. A. regarding the booking of bands or attractions for Mission Beach Ballroom after my return from New York.

“Q. Either before you left for New York or after you returned.

“A. Oh, yes, we had many conversations.

“Q. And with whom?

“A. Most particularly did I discuss this with Hal Howard, who was the one that originated the bookings or the idea of bookings for Mr. Finley.

“Q. What did he say concerning the booking of bands or attractions in the Mission Beach Ballroom?

“A. Well, he was the one who instigated the bookings of everything, as I understand it, with Mr. Finley, when he took over the operation of the Mission Beach Ballroom.

“Q. What I have particular reference to is whether or not M. C. A. would book any bands or attractions into the Mission Beach Ballroom.

“Mr. Ross: I move to strike that question as not being based on anything that was said or on any of the conversations that you are now interrogating the witness about. [381]

“Mr. Desser: The only question I am asking is whether or not any conversation took place. When he answers that question I may be—

“Mr. Ross: I don’t know what conversation he can say took place that has the cause and effect of what you are asking him.

“Mr. Desser: Let the witness answer the question.

(Deposition of Kenneth Later)

"Mr. Ross: I make my objection.

"Mr. Desser: All right.

"A. I believe there were many conversations regarding the booking of bands and attractions at the Mission Beach Ballroom.

"Q. And you say those conversations were with Hal Howard?

"A. Well, I would say that there were several conversations with Larry Barnet.

"Q. Now, you can relate, in substance, the conversations with Larry Barnet concerning the booking of bands or attractions into the Mission Beach Ballroom?

"Mr. Ross: I would like to have the time and place fixed, and the person present.

"A. No, I cannot relate any conversations, although I feel that, since Larry was the head of the department, we would have discussed those things with him when they came up. I would say Hal Howard might have had conversations. [382] My conversations were actually with Hal Howard, whose office was with me down in the theatre: following each telephone conversation that he would have with Larry Finley, he would come and discuss the thing with me as regards the booking of attractions or something which would be salable to Mr. Finley.

"Q. Well, did Mr. Howard ever tell you that he had instructions that no attractions could be booked into Mission Beach?

"A. That no attractions could be booked there?

"Q. That no bands or attractions could be booked into Mission Beach?

"A. Well, certainly not attractions, since we were at that time negotiating regarding attractions.

(Deposition of Kenneth Later)

“Q. After you had returned from New York, was there something said about M. C. A.’s refusal to book into Mission Beach?

“A. Well, I can’t recall any conversation like that. I was really in a most uncomfortable position when I came back from New York, since I was leaving the agency, and it was a pretty unfriendly thing all round. I felt uncomfortable and the boys felt uncomfortable with me.

“Q. Well, now, before you left for New York, did Howard or anyone else in the M. C. A. organization tell you that Finley could not get any bands? [383]

“A. With name value?

“Q. Yes.

“A. Yes. Well, it was generally known among all of the boys at M. C. A. that Pacific Square was an old and valuable account”—

The Court: Just a moment. We will take our recess for a few minutes. Ladies and gentlemen, remember the admonition and keep its terms inviolate. Occupy the jury rooms.

(A short recess was taken.)

The Court: All present. Proceed. Finish with the deposition.

Mr. Jaffe: (Continuing reading):

“Q. Well, now, before you left for New York, did Howard or anyone else in the M. C. A. organization tell you that Finley could not get any bands?

“A. With name value?

“Q. Yes.

“A. Yes. Well, it was generally known among all of the boys at M. C. A. that Pacific Square was an old and valuable account at the Music Corporation and would

(Deposition of Kenneth Later)

certainly have gotten first call on any bands with any name value or box-office value.

“Q. Was that told to you by anyone directly?

“A. I would think it was probably told to me by several people, although I don’t remember an actual [384] conversation during which it was discussed.

“Mr. Desser: No further questions. You may cross-examine, Mr. Ross.

“Mr. Ross: I have no questions.

“Mr. Desser (to witness): That is all, Mr. Later, thank you.

(Whereupon, at 11:15 o’clock in the forenoon, the taking of the deposition of Kenneth Later was concluded.)”

Mr. Christensen: Thank you. You may step down, Mr. Jaffe. I offer it in evidence, your Honor.

The Clerk: That is Plaintiff’s Exhibit 5.

(The document referred to was marked as Plaintiff’s Exhibit No. 5, and was received in evidence.) [385]

Mr. Doherty: May I suggest that the jury be cautioned that where it referred to acts or omissions, that it is not an issue in the case.

The Court: Yes. Of course, I have already instructed the jury on that. Ladies and gentlemen, you will consider that instruction at each phase of the case where that same matter arises. This is a case that involves the question of bands. Proceed.

Mr. Christensen: Call Mr. Dailard, Wayne Dailard.

WAYNE DAILARD,

Called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Wayne Dailard.

Direct Examination

By Mr. Christensen:

Q. You are the Wayne Dailard we have been speaking of here, who formerly had the Mission Beach ballroom and the Pacific Square ballroom in the City of San Diego? A. Yes, sir.

Q. When did you first become the lessee of Mission Beach ballroom in the City of San Diego, sir?

A. It was late in 1939.

Q. At that time did you also acquire the entire Mission [386] Beach Amusement Center?

A. Yes, sir.

Q. And you continued to manage and operate the Mission Beach Amusement Center, including the ballroom, until January 3 of 1945? Is that true, sir?

A. January 1st or 3rd. I don't recall.

Q. Well, you had it New Year's Eve, didn't you?

A. Yes, that is correct.

Q. And you built the Pacific Square ballroom in the City of San Diego here a few years ago, did you not?

A. Yes, sir.

Q. Can you give me the date, sir?

A. I think we opened on December 28, 1940.

Q. And you had an agreement with Music Corporation of America concerning the furnishing to you of bands, did you not, sir? A. Yes, sir.

(Testimony of Wayne Dailard)

Q. You had the letter which was introduced here into evidence this morning, did you not?

A. Yes, sir.

Q. And thereafter, you had the formal agreement which was also introduced and read here in evidence this morning?

A. That is correct.

Q. At the time you had both the Pacific Square ballroom and the Mission Beach ballroom you played at both Music [387] Corporation of America bands, did you not, sir?

The Witness: Will you re-read that?

(Question read by the reporter.)

Mr. Doherty: May it be understood that, in the vernacular, Music Corporation bands are merely those that they act as employment agency for?

The Court: I think that is probably the case. Mr. Christensen, there is no question?

Mr. Christensen: The ones that were supplied to him by Music Corporation of America is what I had in mind, your Honor.

A. Yes, sir.

The Court: Supplied as agent?

Mr. Christensen: Yes, as agent. Yes, your Honor.

Q. And, as a matter of fact, in the year 1944—strike that. Let us start with the year 1945. The last band that you played at Mission Beach was Harry Owens, was it not, sir?

A. Yes.

Q. Commonly known as Harry Owens and his Royal Hawaiians, is that right?

A. I think that is correct.

Q. That was a band which was furnished to you by Music Corporation of America?

A. That is true.

(Testimony of Wayne Dailard)

Q. And the band that you had before that was Stan Kenton? [388]

A. That sounds right, but I would have to consult the records to confirm that definitely.

Q. And while you were playing Harry Owens at the Mission Beach ballroom you were also playing Charlie Barnett at the Pacific Square ballroom, were you not, sir?

A. I believe that is correct; yes.

Q. And immediately before Charlie Barnett at the Pacific Square ballroom you played Jan Garber?

A. I can't confirm those without records.

Q. Have you any records that would help you?

A. Not with me; no. That sounds approximately right.

Q. And immediately preceding that engagement, there was the engagement of Harry James?

A. I couldn't confirm it as definite. That sounds reasonable.

Q. All those that I have read so far are Music Corporation of America's bands, are they not, sir?

A. With the exception of Kenton, yes. Kenton was a General Amusement band.

Q. Kenton. Oh, well, yes. And you played Ted Fio Rito?

A. Yes.

Q. And he was a Music Corporation of America band?

A. That is right; yes.

Q. At the time of the opening of Mr. Finley of the Mission Beach ballroom you played against him there—or, [389] strike that. You played at the Pacific Square Vaughn Monroe, did you not?

A. That is correct.

Q. And at that time you also played or offered the King Sisters, an attraction?

A. That is correct.

(Testimony of Wayne Dailard)

Q. That is the first and only time that you ever played an attraction with an orchestra, is it not, sir?

A. No; that is not correct.

Q. Tell me when—

A. I can't give you dates, but we have played such attractions as the Andrews Sisters.

Q. Can you tell me when that was, sir?

A. Well, it was in the last three years. Booking a hundred attractions in a year, you can't call times and dates. That isn't reasonable. We played, I would say, at least ten major attractions.

Q. Give the best memory—

A. With major bands.

Q. Give me the best memory as to when and who you played those ten attractions?

A. It was during the past three years. I can give you that accurately. It is a matter of record. In a few days, or by tomorrow, I could give you that accurately.

Q. Will you do that? [390] A. Yes.

Q. Will you bring it to me tomorrow?

A. Yes. As a matter of fact, I think we played the Andrews Sisters three different times. We played attractions such as Sally Rand.

Q. You will bring that for me, will you, sir?

A. Yes.

Q. During the year 1945, at Pacific Square you played—I have already read to you Charles Barnett, I believe—Stan Kenton, Jan Garber, Charles Barnett, Ted Fio Rito, Vaughn Monroe. You followed that, did you not, by having two bands, Bob Chester and Jack Teagarden?

A. Yes. That is the common practice.

(Testimony of Wayne Dailard)

Q. Did you ever at any time besides that time ever have two bands? A. Yes.

Q. Tell me when, sir?

A. I can't give you the date.

Q. At your ballroom at Pacific Square?

A. Yes.

Q. Do you have a record of that, sir? A. Yes.

Q. Both Bob Chester and Jack Teagarden are M. C. A. bands, are they? A. That is correct. [391]

Q. Then you followed that, did you not, with Ted Lewis?

A. I can't give you the accurate dates. That sounds right.

Q. And he, too, was a Music Corporation of America band? A. Yes.

Q. You followed that by Jean Cooper, did you not?

A. He should have come in there; yes.

Q. He, too, was a Music Corporation of America band? A. That is correct.

Q. And you again had Jack Teagarden, did you not?

A. Well, I don't know. I can bring those records, if you want to wait for them, and give it to you accurately. Our booking sheets are open, our procedure is.

Q. I think that might be better, sir. You have handed me a memorandum on the—well, it is entitled "Memorandum to Pacht, Pelton, Warne, Ross & Bernhard"?

A. Well, that has no significance, that heading. I simply jotted those figures down.

Mr. Warne: It will be stipulated that Pacht, Pelton, Warne, Ross & Bernhardt has no part in this at all?

Mr. Christensen: I just stated it was on this memorandum, sir. I know nothing more about it than that, sir.

(Testimony of Wayne Dailard)

Q. And you show that a profit derived from the operation of Mission Beach for the year 1944 was \$79,924.53—correct, [392] sir?

A. That is correct, sir.

Q. And for the year 1943—

Mr. Doherty: May I reserve our usual objection, on the ground, your Honor, this is incompetent, irrelevant and immaterial, hearsay, not within the issues of the case? That is not a proper basis for comparison; and that you cannot use this gentleman's operation as the basis for what Mr. Finley might or might not have made.

The Court: Overrule the objection.

Q. By Mr. Christensen: And for the year 1943, at Mission Beach, the profit was \$72,759.66, sir?

A. That is correct.

Q. And for the year 1942, say, about \$50,000?

A. That is about correct.

Q. Now then, for the same period of time at Pacific Square, starting in reverse order this time with the year 1942, the profit—

Mr. Doherty: The same objection, your Honor, as to the testimony on Pacific Square; the same objection that I have heretofore made.

The Court: The same ruling.

Q. By Mr. Christensen: To continue with the question—\$53,608.88, sir? A. That is correct. [393]

Q. For 1943, \$123,300.09, sir?

A. That is correct.

Q. And for 1944, \$169,582.28?

A. That is correct.

(Testimony of Wayne Dailard)

Q. You sold the Mission Beach—I misspoke myself. You sold Pacific Square, did you, in 1945, sir?

A. Yes; July 1st.

Q. So that, for the six months of 1945 it was approximately \$30,000, sir? A. Yes.

Q. To whom did you sell?

A. To Mr. Walter Stutz.

Q. Mr. Walter Stutz prior to that time, that is to say, prior to buying Pacific Square, had the liquor concession in the Pacific Square ballroom?

A. That is right.

Q. You knew, of course, that the City Council would advertise for bids for the leasing of the Mission Beach ballroom for a period of three years beginning on or about the 1st day of January of 1945, did you not, sir?

A. Yes.

Q. And you did make a bid there?

A. That is correct.

Q. Mr. Dailard, I will ask you to examine this photostat and tell me if you signed and submitted to the City [394] Council of the City of San Diego the original thereof, sir? A. Yes; this looks correct.

Q. And that is a photostatic copy of your signature, is it, sir? A. Yes.

Q. And the signature there of Edmund A. Wakelin?

A. Is my partner.

Q. You recognize that as his signature?

A. Yes, sir.

Mr. Christensen: I offer this as our exhibit.

Mr. Doherty: Just a moment, your Honor. That is the same document your Honor ruled on on Tuesday, subject to our objection, that is, ruled on our objection;

(Testimony of Wayne Dailard)

and, stating our objections, as incompetent, irrelevant and immaterial, hearsay as to the defendants in this case, not within the issues.

The Court: Are you renewing your objection now? Do you mean that you are renewing your objection now, Major?

Mr. Doherty: Yes, your Honor.

The Court: The objection is overruled.

The Clerk: Plaintiff's Exhibit 6.

(The document referred to was marked as Plaintiff's Exhibit 6, and was received in evidence.)

The Court: You had better show that bid to the jury. They do not know what is in it. Read it now or at a later [395] time.

Mr. Christensen: Well, I think that this might be a good time to read it.

The Court: As I understand it, the objection does not go to the authenticity of the photostat?

Mr. Doherty: It does not go to that ground, your Honor. I might say the further ground, that there is no foundation laid; there is no showing of a combination; that there is no offer to connect it up; that any statements that Mr. Daillard made were voluntary on his part and not binding on any of these defendants. And I am not raising any question on the foundation that it is not the original document.

The Court: Overruled.

Mr. Christensen: May I have Mr. Jaffe read it? I have not recovered from my cold.

(Testimony of Wayne Dailard)

The Court: You had better have one of the other gentlemen use their voice.

Mr. Jaffe: I do not mind.

The Court: All right.

Mr. Jaffe: (Reading Plaintiff's Exhibit 6 in the following words and figures):

"October 30, 1944

"To the Honorable Mayor and the Members
of the City Council of San Diego

"Gentlemen: [396]

"Under lease from the City of San Diego we have operated the Mission Beach Amusement Center for the past five years. It is our desire to continue to operate the Mission Beach Amusement Center and, therefore, we respectfully submit the following bid for a lease.

"We make this bid subject to the 'Notice to Bidders', as published in San Diego newspapers, and also subject to the further terms and conditions filed in the office of the City Clerk under Document No. 350454.

"Accompanying this bid and made a part of it is our certified check in the sum of \$1,000.00, payable to the Treasurer of the City of San Diego. This check is handed you as a guarantee that we will execute the contract if it is awarded to us. We also hand you with this bid a statement executed by the Commercial Casualty Insurance Company of Newark, New Jersey, to the effect that said company upon our request will issue the bond required under the terms of the lease.

"If a lease is awarded to us for a period of three years commencing January 1, 1945, we will pay to the City

(Plaintiff's Exhibit 6)

of San Diego, as rental \$20,000.00 per year, plus five per centum of the gross receipts derived from the operation of said Amusement Center. [397]

"If the lease is awarded to us, we agree that we will operate the Mission Beach Amusement Center in the following manner:

"1. We will not operate or permit the operation by any other person of any concession or facility therein located in violation of any Federal, State or Municipal law.

"2. We will maintain and operate the picnic area and the play area lying westerly of the parking lot. We will make no charge for the use of the picnic facilities. In connection with various games which may be played in the play area, as soon as we can determine which games are most suitable, popular and available we will submit the charges to be made for the use of play articles to be furnished by us, such as horse shoes, nets, balls, etc., to the City Manager for his approval, and we will not make any charge which does not meet with the approval of the City Manager or such other City official or officials as you may designate.

"3. (a) We propose to operate a minimum of ten facilities and devices for amusement, and more if available, which may be classified under the general character of 'rides', such as merry-go-round, Ferris wheel, tilt-wheel, caterpillar, scooter, rocket, roll-o-plane, etc. The price to be charged to the public [398] for the use of these amusement devices will be fifteen cents plus tax.

"(b) We propose to reduce the present twenty-four to seventeen facilities and devices for amusement which

(Plaintiff's Exhibit 6)

may be classified under the general character of 'amusement Skill games', such as milk bottle games, dart games, cat racks, basket ball, shooting galleries, etc. The present charge made for these games is twenty-five cents, however we propose to reduce the present charge so that of the approximate seventeen such games the charge will be ten cents for four of such games, fifteen cents for seven of such games, and twenty-five cents for six of such games.

"(c) We propose to operate a minimum of five facilities and devices for amusement which may be classified under the general character of 'miscellaneous', such as fun house at a charge to the public of fifteen cents, glass house at a charge to the public of fifteen cents, photo studios at charges to the public from twenty-five to fifty cents, penny arcade, etc.

"(d) We propose to operate approximately ten restaurant and variety food dispensing stands and two wine and beer establishments. In connection with [399] the price to be charged in the restaurants and the wine and beer establishments, prices in excess of the maximum OPA ceilings will not be charged. In connection with food and drinks generally sold, we agree to abide by the OPA ceiling prices, and it is proposed to charge fifteen cents for hot dogs and hamburgers, ten cents for ice cream, ten cents for popcorn, ten cents for soft drinks, and five cents for coffee.

"4. During the season we intend to offer to the public each year ten major free or promotional events or facilities, such as All States Day, Texas Day, Bathing Beauty Review, Under-Privileged Children's Day, Water Carnival, Labor Day Celebration, Fourth of July, Me-

(Plaintiff's Exhibit 6)

morial Day. When these events occur we will offer such free attractions as may be available and conditions will permit.

"5. During the season from May 15 to September 15, inclusive, of each year we will operate the dance hall a minimum of three nights a week. We propose to operate the dance hall after the season for as many additional weeks as weather and other conditions will permit. The Music Corporation of America controls the booking of ninety-five percent of all Name Bands in this country. We have an agreement with the Music [400] Corporation of America granting to us the exclusive rights of presentation in San Diego County of attractions controlled by said corporation. We believe that we are the only persons who are in a position to furnish San Diego with a continuous flow of Name Bands, and it is our intention, subject always, of course, to condition beyond our control, to place Name Bands at Mission Beach. When the dance hall is not operated by us it will be available to the public for lease at \$125.00 per night.

"In connection with our qualifications, experience and financial standing, we desire to offer as a part of this bid letters signed by each of us, dated October 28, 1944, setting forth our qualifications and experience, and attached to said letters is a financial statement showing our assets and liabilities as of October 28, 1944.

"Further, in connection with our qualifications and experience, we wish to state that we have a present existing staff of competent trained amusement operators. We are maintaining an office in San Diego. We are an existing going business, operating the Mission Beach Amuse-

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(Plaintiff's Exhibit 6)

ment Center and we can continue with our operation of that enterprise and in the manner herein stated without the necessity of a [401] reorganization or the organization of a new operating company. In connection with our present operation of the Mission Beach Amusement Center we have equipment which we value at \$6,900.00, which equipment is necessary and is now in use.

"We trust that we have incorporated in this bid all of the information you require. Our representatives are willing to cooperate fully with you at any time and to furnish you with whatever additional information you may desire.

"Respectfully submitted,

"(Signed) Wayne W. Dailard

"(Signed) Edmund A. Wakelin"

Attached thereto is a letter on the Pacific Square, Ltd. stationery, San Diego, California, dated 28 October 1944.

"The Honorable Council of the City of San Diego

"Civic Center

"San Diego, California

"Gentlemen:

"You will find attached herewith financial statement as of today's date in accordance with the provision outlined in Paragraph 17, page 5 of the Specification for Bids on Lease of the Mission Beach Amusement Center.

[402]

(Plaintiff's Exhibit 6)

"With respect to qualifications and experience referred to in the same paragraph, my personal background including the following:

"Six years as Division Manager for the Radio Keith Orpheum Corporation, 1560 Broadway, New York City.

"Seven years as Western General Manager for the same company with headquarters in St. Louis and Chicago. During this period I directed the entire operation of 226 theatres located in major cities.

"One year director of Electric Park, Kansas City, Missouri.

"One year director of Krug Park, Omaha, Nebraska.

"Three years District Manager for the Fox West Coast Theatres, headquarters Los Angeles, and San Diego.

"Manager of the San Diego Exposition in 1936.

"For the past five years have conducted my own business, which includes the direction of Mission Beach Amusement Center and Pacific Square, Ltd.

"Other affiliations include Member of the Board of Governors, St. Louis Municipal Opera; Board of Governors of the New Orleans Mardi Gras; member of the Veiled Prophet Association, St. Louis, and past member of the Theatre Guild. [403]

"Very truly yours,

"(Signed) Wayne W. Dailard"

(Plaintiff's Exhibit 6)

"Financial Statement
"As of 28 October 1944

"Assets

Cash in Bank of America	\$48,386.20
Securities	3,750.00
Book value of interest in Pacific Square, Ltd.	118,420.26
Book value of El Cajon Valley Ranch	28,639.26
Book value of personal property	19,973.54
Book value of interest in Beach Amusement Enterprises equipment	3,450.00
Total Assets	\$222,619.26

"Liabilities

Accrued balance of Federal Income Taxes to date, payable December 31, 1944	\$ 7,572.98
Total liabilities	\$ 7,572.98
Net Worth	\$215,046.28"

Letter dated 28 October 1944.

"The Honorable Council of the City of San Diego

"Civic Center

"San Diego, California

"Gentlemen: [404]

"You will find attached herewith financial statement as of today's date, in accordance with the provision outlined in Paragraph 17, Page 5 of the Specification for Bids on Lease of Mission Beach Amusement Center. ' ' ' "

(Plaintiff's Exhibit 6)

"With respect to qualifications and experience referred to in the same paragraph, my personal background includes the following:

"3½ years affiliated with Pantages Theatres Circuit.

"2 years with West Coast Theatres Circuit.

"2 years as concession director of the San Diego Exposition.

"For the past five years have conducted my own business which is the management of Mission Beach Amusement Center.

"Very truly yours,

"(Signed) Edmund A. Wakelin"

"Financial Statement

"As of 28 October 1944

"Assets

Real Estate—4 Unit Court

822 Brighton Court, Mission Beach	\$20,000.00
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Securities	6,000.00
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Personal Property	8,000.00
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[405]

Cash in Bank of America	\$ 38,650.00
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Accounts Receivable	2,000.00
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Book Value of interest in Beach

Amusement Enterprises equipment	3,450.00
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Total Assets	\$ 78,100.00
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"Liabilities

Mortgage on above Real Estate	\$ 6,800.00
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"Net Worth	\$ 71,300.00"
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(Plaintiff's Exhibit 6)

I Hereby Certify that the above and foregoing is a full, true and correct copy of contents of Document No. 350633, filed in the office of the City Clerk, San Diego, California, on October 31, 1944.

"Fred W. Sick, City Clerk,

"By (Signed) Clark M. Foote, Jr., Deputy."

Q. By Mr. Christensen: Now, Mr. Dailard, you advertised in The Tribune-Sun, a paper of general circulation in the City of San Diego, on Monday, May 14, 1945, on Tuesday, May 15, 1945, and on Wednesday, May 16, 1945, your Pacific Square ballroom, did you not, sir?

A. Yes; that is correct.

Q. I show you the advertising and ask you to identify it. They are in reverse order from what I have just read them to you, Mr. Dailard.

A. Yes, that is our ad.

Q. There are three of them, sir. I wish you would look [406] at all three of them.

A. That is ours; yes, sir.

Mr. Christensen: I offer these three ads as our exhibits next in order, your Honor.

Mr. Doherty: Object to them on the ground that they are hearsay, incompetent, irrelevant and immaterial, outside of the issues of the case; they are volunteer statements by a person not a party to this action and at a date subsequent to the commencement of the action.

Mr. Christensen: I only say that he is named in the action.

The Court: The objection is overruled.

This line of evidence, ladies and gentlemen, is to be considered by you not as proof of the facts stated in the advertisements, but the fact of the advertisements.

(Testimony of Wayne Dailard)

There are certain representations made there and certain statements which are material in this case, which will have to be connected up with the defendants in this case. The witness on the stand is not a defendant in the case. He is alleged to be what the pleadings call a co-conspirator, but before the unlawful agreement can be considered as applicable to those whom it is alleged constitute the unlawful enterprise, there must be a connection shown which justifies either the inference by you or the finding by you from direct testimony that there is such an agreement. [407]

Mr. Doherty: Your Honor, may I suggest or request that the same admonition be given to the jury respecting the document that has just been read? It is not only signed by Mr. Dailard, but signed by a party who is certainly not a party to the action, a Mr. Wakelin.

The Court: Of Course, the exhibit—what is the number of that, Mr. Clerk?

Mr. Warne: Six, your Honor.

The Clerk: Six.

The Court: —Exhibit 6 falls in a little different category from the advertisements that have just been received in evidence. But before Exhibit 6 or any other exhibit can be tied into the defendants in the case, there must be sufficient evidence which justifies either an inference by you that there was a partnership or an unlawful combination and agreement, or what in law is called a conspiracy. I am using that term because it is a legal phrase, not because of any other feature or connotation that may be implied by the use of it.

The other name, there has been no explanation at this time as to the other name that is on Exhibit 6. You are

(Testimony of Wayne Dailard)

not to infer anything by reason of the fact that there is another name on it.

Proceed.

The Clerk: For the record, that newspaper is Plaintiff's [408] Exhibit No. 7.

The Court: There were three of them, I believe, clipped together.

The Clerk: Use them as one exhibit?

Mr. Christensen: That is agreeable, your Honor. They are clipped together.

The Court: Put them all together.

(The documents referred to were marked as Plaintiff's Exhibit No. 7 and were received in evidence.)

Q. By Mr. Christensen: Mr. Wakelin, whose name appears on that bid, at that time was a partner with you, was he not, sir? A. In Mission Beach.

Q. Yes, sir.

A. He was a member of the general partnership.

Mr. Christensen: That is right. Ladies and gentlemen, I desire only to invite your attention to the ad which has just been received in evidence. The three are identical. Let me read it. The ad reads as follows:

"Do not be confused Pacific Square will continue to present 90% of all name bands. Coming during ensuing weeks:"—

and I will have to read this carefully—

"Harry James, Les Brown, Gene Krupa, Sammy Kaye, Tommy Tucker, Harry Owens, Artie Shaw, Guy Lombardo, [409] Xavier Cugat, Freddie Martin, Vaughn Monroe, Charlie Spivak, Henry Busse, Jan Savitt, Ted Weems, Louis Prima, Ted Lewis, Eddie Duchin, Freddie

(Testimony of Wayne Dailard)

Slack, Hal McIntyre, Benny Goodman, Wayne King, Abe Lyman, Joe Saunders, Charlie Barnet, Henry King, Joe Reichman, and many others."

The ad continues:

"Dancing 9:00 to 1:00, Friday, Saturday, Sunday, held over 2nd big week, Jan Garber and his orchestra, Music Corp. of America Bands, Pacific Square, Direction, Wayne Dailard, every Tuesday old-time dance."

The ad appearing under Tuesday, May the 15th, is the same except down as we get below:

"Tuesday Merl Lindsay and his orchestra. Friday, Saturday, Sunday, Jan Garber and his orchestra held over. Music Corporation of America Bands, Pacific Square, Direction Wayne Dailard."

And the ad of Monday, May 14th, 1945, again:

"Do not be confused Pacific Square will continue to present 90% of all name bands. Coming during ensuing weeks,"

and the list is the same.

"Dancing 9:00 to 1:00." [410]

This ad is the same as the ad that I just read to you.

Q. Mr. Dailard, during the time that you operated Mission Beach during the year 1944 how many nights a week did you conduct dancing there, sir?

A. I think, during the summer period we operated three nights a week.

Q. The summer period was what time, sir?

A. From about May 30th to Labor Day.

Q. And did you operate three nights every week during that time?

(Testimony of Wayne Dailard)

A. I don't know without consulting records. I believe we did. In 1944, I am sure we did.

Q. And then, let us take the period from January 1st to May.

A. I think it was just miscellaneous engagements, just occasional engagements.

Q. And from Labor Day until the end of the year, sir?

A. Probably the same application.

Q. Was that true also during the year 1943?

A. Substantially so; yes, sir.

Q. And during the year 1942?

A. I would have to consult records.

Mr. Christensen: With the exception that this witness has agreed to bring to us tomorrow a list of the bands which played there, I have no further questions. [411]

The Court: Do you want to defer your cross examination, Major, until the morning, or do you want to proceed now with what cross examination you have?

Mr. Doherty: I was going to suggest it probably would be better if counsel had another short witness that he could now interpose, then we would not have Mr. Dailard under cross examination and then under direct and back and forth. It would be more orderly the other way.

The Court: I think it would be. Haven't you someone that you can fill in the 15 or 20 minutes with?

Mr. Christensen: May I have the privilege at this time of having read Mr. Finley's bid to the City Council which is already, I believe, in evidence?

The Court: Yes. You may leave the stand, Mr. Dailard, and return in the morning.

The Witness: Thank you. [412]

(Testimony of Wayne Dailard)

The Court: Was it marked for identification, Mr. Figg? Is that the Plaintiff's exhibit?

Mr. Warne: May I suggest, your Honor, that this occurred, that we requested at the pre-trial hearing the admission that that was the certain document.

Mr. Christensen: May I offer it at this time and have it read rather than call another witness now? I haven't time to call a witness.

Mr. Doherty: And it will be agreed that Mr. Finley has taken the stand and identified this as his bid, and that he may be examined upon it when he takes the stand?

Mr. Christensen: Yes, your Honor.

Mr. Warne: If the court please, there is one question. I don't believe that the document just presented, as a matter of fact, I know for a fact that this is not the whole of the bid submitted by Mr. Finley, and I submit a foundation be laid on that.

Mr. Christensen: I have the rest of the documents here. I have all of them for you.

The Court: We had one here at the pre-trial. I was under the impression that it was identified in the trial before the jury, but probably not.

Mr. Doherty: It is understood, of course, that in the offer of this agreement it is subject to our objection that it is hearsay, not within the issues of the case, no [413] foundation laid showing any connection between it and the defendants, and no offer or promise to connect it up with any alleged conspiracy or combination. I presume that would cover it.

The Court: This doesn't interest you, ladies and gentlemen, so that you don't need to be worried about it. It

(Testimony of Wayne Dailard)

is for the judge. Objection overruled. The same ruling that has been made.

From now on it is for the jury.

Mr. Christensen: Will you mark this, please?

The Clerk: Is this for identification?

The Court: No, it is in evidence.

The Clerk: Plaintiff's Exhibit No. 8.

(The document referred to was marked as Plaintiff's Exhibit No. 8, and was received in evidence.)

The Court: Do you have it all together now? Is it all there now, gentlemen?

Mr. Christensen: Yes.

The Court: Mr. Warne, it is now all intact, the entire bid?

Mr. Warne: Very well.

The Court: Counsel states it is.

Mr. Warne: We haven't had an opportunity to examine it, so I do not know.

(The document referred to was handed to counsel.)
[414]

The Court: It is now about twenty minutes after four. I think you had better look that over between now and tomorrow morning, and we will excuse the jury at this time and give them a little vacation.

Ladies and gentlemen, we will take a recess until 10:00 o'clock tomorrow morning. Remember the admonition and keep its terms inviolate, and be here in the morning at 10:00 o'clock.

(Whereupon, at 4:20 o'clock p. m. January 31, 1946, an adjournment was taken until 10:00 o'clock a. m., Friday February 1, 1946.) [415]

Los Angeles, California, Friday, February 1, 1946,
10:00 a. m.

The Court: All present. Proceed.

Mr. Christensen: Mr. Dailard, is he here?

WAYNE DAILARD,

called as a witness by and on behalf of the plaintiff,
having been previously duly sworn, resumed the stand
and testified further as follows:

Direct Examination (Resumed)

By Mr. Christensen:

Q. Mr. Dailard, yesterday before you left, I guess
you observed I was using a list, and I loaned it to you
to check? A. That is correct.

Q. You have made a check of this list which I loaned
to you, which I now hold in my hand? A. Yes, sir.

Q. Did you not, sir? A. Yes, sir.

Q. And the list, you have told me here a moment ago,
was correct as far as your memory serves you?

A. Yes.

Mr. Christensen: May I offer this list of bands which
have appeared at both Pacific Square and Mission Beach
now into evidence?

Mr. Doherty: May I look at it quickly, your Honor,
[417] because I have not seen it?

Mr. Christensen: I have a copy, Mr. Doherty, if you
would like, that you may use for a moment.

Mr. Doherty: Whose are the lead pencil memo-
randums?

The Witness: Those are mine.

Mr. Christensen: Suppose we ask Mr. Dailard.

(Testimony of Wayne Dailard)

Q. You say that those are yours A. Yes.

Mr. Christensen: Thank you, sir.

Mr. Doherty: I haven't had a chance to look at it, your Honor. I assume it is something that has been checked by the witness.

Mr. Christensen: Mr. Dailard has just advised us that he has checked this.

The Witness: It is substantially correct.

The Court: It will be received.

The Clerk: Plaintiff's Exhibit No. 9.

Mr. Doherty: Subject to our general objection heretofore made, your Honor.

The Court: So ordered. And if it is found to be inaccurate, subject to be rechecked.

The Witness: Yes, sir.

The Court: Did you hear me, Major? If found to be inaccurate, subject to rechecking?

Mr. Doherty: Yes, sir, your Honor. [418]

The Court: If you both agree that it does not contain accurately the matter that it purports to contain.

Mr. Christensen: Yes, sir, your Honor, of course.

The Court: Very well. Cross-examine.

(The document referred to was marked as Plaintiff's Exhibit No. 9, and was received in evidence.)

Mr. Christensen: I would like to ask just a couple more questions, sir.

Q. During the year 1945, all of the bands, all of the name bands submitted to you by Music Corporation of America were used by you in Pacific Square, were they not sir?

(Testimony of Wayne Dailard)

A. That would have to be checked. I can't answer that.

Q. Can you recall any?

A. I don't recall any that were submitted that were not booked, but it often happens that—

Mr. Christensen: I have some photographs which I have heretofore submitted to counsel.

Q. Mr. Dailard, I show you here certain photographs, taking them in order, and ask you if you recognize the photographs? A. Yes.

Q. That is a photograph of Pacific Square ballroom, is it not? A. It is not very complimentary. Yes.
[419]

Q. And this also is a photograph of the Pacific Square ballroom, sir? A. Yes.

Q. This also is a photograph of the Pacific Square ballroom, is it not, sir? A. Yes, sir.

Q. And this is a photograph of one of the scenes in Pacific Square ballroom? A. Yes, sir.

Mr. Christensen: May these be received into evidence as our exhibit, collectively, next in order, sir, your Honor?

The Court: Any objection to these, gentlemen, these photographs?

Mr. Doherty: Subject to the objection—I say, the general objection, hearsay, incompetent and irrelevant, not within the issues of the case, and no showing of a combination or any promise to connect up with any conspiracy or combination.

The Court: Objection overruled.

(Testimony of Wayne Dailard)

I wanted to ask you a question about the first one of these series in exhibit—what?

The Clerk: Plaintiff's Exhibit No. 10.

(The documents referred to were marked as Plaintiff's Exhibit No. 10, and were received in evidence.) [420]

The Court: There are four of them in this exhibit. This large building back of the telegraph pole, what is that? A. That is the Civic Center.

The Court: What is the building?

The Witness: I beg pardon, sir?

The Court: What is the large building?

The Witness: Civic Center.

The Court: The City Hall of the City of San Diego, isn't it?

The Witness: That is correct.

The Court: Show them to the jury if you want to. [421]

Q. By Mr. Christensen: I have one more question, Mr. Dailard. I asked you yesterday to check to determine if you had used any attraction, as distinguished from a band or orchestra, at any time prior to February 2, of 1945? A. Yes, sir.

Q. Will you tell me when that was, and what it was?

A. May I consult notes?

The Court: Yes, sir. And keep your voice up, please.

The Witness: Mr. Christensen, I haven't the exact play dates because the contracts on attractions are on file in San Diego,—

Q. By Mr. Christensen: Yes, sir.

A. —but I can give you the years, and I can give you the place they appeared.

(Testimony of Wayne Dailard)

Q. Yes, sir.

A. In 1945 on February 1, 2 and 3 at Pacific Square we had the King Sisters.

Q. May I interrupt you there? That was the date that Mr. Finley opened at Mission Beach?

A. I don't know. On March 9, 10 and 11, 1945 we played Abbott and Costello at Pacific Square.

Q. And through whom were those booked?

A. The arrangements were made, I think, through Music Corporation. They were booked direct with Abbott and Costello's agent, as I remember, but I think the transaction was made [422] through Music Corporation.

Q. Well, can you tell me if there were any attractions prior to the time that Mr. Finley opened, say, February 3rd?

A. Let me finish, and I will give it to you. I have it all here. In 1943 at Pacific Square we presented Sally Rand.

Q. Can you tell me approximately when that was, sir?

A. Not without getting the original contract. In 1943 at Pacific Square we presented the Andrew Sisters on two separate occasions. I can't give you both dates. I have one accurately, October 22, 23 and 24. It was a repeat appearance.

Q. That was during the year 1943?

A. Yes. You won't find it on your list because those contracts were issued from different agencies. We have the copies of the original contracts in San Diego in our file.

(Testimony of Wayne Dailard)

Q. Yes, sir.

A. In 1942 and in 1943 at Pacific Square we presented, "Six Hits and a Miss."

In 1942 or 1943 we presented the Merrimacs.

In 1942 at Pacific Square we presented Liz Tilton as an added attraction.

In 1941 at Mission Beach we presented Dick Powell.

In 1942 at Mission Beach we presented Faith Bacon. In 1941 at Mission Beach we presented the Andrews Sisters.

In 1943, sometime I think during the month of April, at [423] Pacific Square we presented the Pied Pipers, and in 1942 or 1943 we presented Harriet Hilliard.

Q. Tell me—

A. Now, we are able to substantiate this as to accuracy when we obtain our files, if it is necessary. If you require that, we will have to dig them out.

Q. If that is your best memory, Mr. Dailard, I wouldn't ask you to do any more.

A. Thank you, sir.

Q. You have made an effort to determine this for me.

A. Thank you, sir.

Q. Harriet Hilliard, who is that or what is she?

A. She was a singer appearing with Ozzie Nelson's band. As a matter of fact, she is his wife. She appeared with him for some time, and later became an attraction for herself, and it became necessary to book her separately. Inasmuch as they appeared jointly over the radio, we thought it was good business to keep the team together and booked her as a special attraction.

The Court: Ozzie Nelson was the leader?

(Testimony of Wayne Dailard)

The Witness: Yes, but she had her individual act.

The Court: They have their individual program now?

The Witness: That is correct, I believe.

Q. By Mr. Christensen: At the time you had booked Ozzie Nelson's orchestra, and you had her as an added [424] attraction?

A. I don't know that that is the case. I know it was the case in one instance, but I have a hazy recollection of having booked her with one other band.

Q. Now, one other I remember you mentioning is Faith Bacon. Is that correct, sir? A. Yes.

Q. Tell me, what is she?

A. Faith Bacon is a dancer, at one time nationally renowned, but a little bit antiquated at the moment.

Q. Now, what are the others? Refer to your list, or if you will pardon me and let me have this, maybe you can help me. There are some of them that I remember. The King Sisters, that is an attraction which is a part of and appears with the Alvino Rey orchestra; that is correct?

A. It did appear. I understand since they have outgrown the band stage and have become an attraction.

Q. Miss Sally Rand, I think we needn't ask you about that. The Andrews Sisters, that is a singing act; is that correct? A. That is correct.

Q. "Six Hits and a Miss," is that also a singing act?

A. Yes, it was a big radio attraction, and we booked it.

Q. And the Merrimacs? [425]

A. That likewise was a five-people singing act.

(Testimony of Wayne Dailard)

Q. Now, Tiz Tilton? A. Liz Tilton.

Q. I am sorry. I thought that was a "T". Please tell me what she is.

A. She is a singer, a radio personality.

Q. Now, Dick Powell in 1941 had an orchestra, didn't he? A. No, he didn't.

Q. He appeared separately?

A. He appeared as an act.

Q. And the Pied Pipers seem to be the other one on here, and that is a singing act? Am I correct, sir?

A. A singing act.

Mr. Christensen: Thank you for helping us. That is all, Mr. Doherty.

Mr. Doherty: Your Honor, may I induce Mr. Dailard to raise his voice by examining him from back there?

The Court: I asked him to raise his voice. Make a little effort, please. It is hard to hear you.

Cross-Examination

By Mr. Doherty:

Q. Mr. Dailard, now speak so I can hear you, and I have a head cold. How many times, in addition to February 2nd and 3rd, I believe the dates were, 1945, how many other [426] times did you book the King Sisters? A. Read that back to me.

(The question was read.)

A. I think on two different occasions.

Q. The last exhibit shown to you was Exhibit 10, which was photographs of Pacific Square?

A. That is correct.

(Testimony of Wayne Dailard)

Q. You saw those, did you? A. Yes, sir.

Q. From what angles were those photographs taken?

A. Very uncomplimentary.

Q. What part of the building?

Mr. Christensen: I object and ask that the answer be stricken as a conclusion and opinion of the witness, and not responsive to the question.

The Court: Probably the adjective term is objectionable. Can you describe where the camera was set from that picture?

The Witness: The camera apparently was placed at some tracks that run immediately behind our building. I may, however, describe the situation, that this building is placed within a stone's throw of San Diego's finest building, which is the Civic Center, and on the main arterial highway leading into town.

Q. By Mr. Doherty: How far is this building located from the Civic Center? [427] A. One block.

Q. You testified yesterday that on July 1st you had sold this property to Mr. Stutz?

A. That is correct, sir.

Q. And what was the sales price?

A. Three hundred thousand.

Q. \$300,000.00? A. That is correct, net.

Q. And what were the terms of sale? A. Cash.

Q. Was it all cash?

A. It was cash at the time of the transaction. We later put back one hundred thousand first trust deed as an investment.

Q. That is \$200,000.00 was paid to you in cash net?

A. That is correct.

(Testimony of Wayne Dailard)

Q. And one hundred thousand first trust deed?

A. Which was at our request. The deal was predicated on a cash basis.

Q. You have had no interest in that property since July 1st last? A. No, sir.

Q. Mr. Dailard, what experience have you had in the entertainment world prior to your activities at Mission Beach and Pacific Square? [428]

A. I have spent twenty-six years in the business. I was affiliated with the Orpheum circuit for a number of years. I was affiliated with the Fox-West Coast chain for two years. I built, or operated and assisted in building the World's Fair. I was managing director of the Fair from the middle of 1935 through the liquidation period, and since that time I have operated my own business. That was in 1936.

Q. Which fair are you referring to?

A. The San Diego Fair.

Q. How did you come to be named director of that, if you know?

A. I was approached by a group—I was approached by the board of directors of the Exposition Corporation, which was comprised of 126 of San Diego's outstanding business people, who asked me to take over their situation, take over the management and direction of the Fair. This had happened after the Fair had opened, and they had got a little bad start. I was at the time under a contract to Fox Theatres, and I think Mr. Emil Klicka, vice-president of the Bank of America, Mr. Raymond Wansley, and other gentlemen of San Diego approached my superiors and asked for a loan of

(Testimony of Wayne Dailard)

me for the period of the Fair, which was granted by the officials of the Fox Theatres. As I stated, it was through the entire period of the Fair, and the demolition and liquidation of the Fair Corporation. [429]

Q. What was the investment in that Fair property and the activities there?

A. We turned over—this is an estimate as accurate as possible to arrive at—we turned over in the neighborhood of fifteen to twenty-two million dollars. That was in building and the entire net intake and outlay of the corporation and of the concessionaires connected with the corporation.

Q. And you were the general manager and director of it under the direction of the Board of Directors?

A. Yes.

Q. Now, as to the outcome, the financial outcome of the Fair, was it a success or was it in the red?

A. We operated—we had the distinction, I should say, of operating the one of two successful fairs in a hundred years, that is, on a large scale, the Century of Progress, I am told, was—

Mr. Christensen: Well, just a moment. May this be stricken as a conclusion or opinion, and based upon hearsay?

Mr. Doherty: I concede that it go out, your Honor, the Century of Progress as a comparison.

Q. Just tell us what the financial outcome was of the San Diego Fair?

Mr. Christensen: To which we object as being immaterial to any issues here presented. [430]

(Testimony of Wayne Dailard)

The Court: Overruled.

A. We finished the second year of the Fair with the entire subscription returned to the public. In other words, the premise upon which the Exposition was built was a contribution returnable if earned. It was not a debenture or bond issue; it was returnable to the individual citizen only if earned.

We returned the entire subscribed investment made by, or contributions made by the public.

We left, I think, nine substantially built concrete buildings, a completely improved park of 1400 acres. All of our equipment was left to the City of San Diego.

Beyond that, we had in our fund some \$126,000 which was held—some of it is being held yet—to satisfy any claims that might come up in the years following the dissolution of the corporation.

Our Fair was eminently successful.

Q. By Mr. Doherty: During the operation of that Fair did you have any form of entertainment as a part of it?

A. That was the first policy I instituted, and probably the most worthwhile thing I contributed to the Fair, was the fact that I immediately put in strong nationally known attractions. And recovery, I should say, because the corporation was in very bad shape when I took over, can be traced to the first day that we presented an attraction in the fair- [431] grounds.

I spent—that is an estimate; I could get it accurate—I think, possibly, during the entire operation of the Fair I administered well over a million dollars for entertainment of various forms. I brought the Mexico City

(Testimony of Wayne Dailard)

Municipal orchestra, I brought the American Choir, and other attractions would be attractions such as Sally Rand, a band like Ben Bernie, the Canadian Mounted Police Troup. We brought a variety, a widespread variety of entertainment which was intended to attract every class of people. We brought, I think, the Philadelphia Philharmonic; we had the San Francisco Symphony; we induced the Ford Motor Company to build us a bowl and sponsor a season of sixteen weeks of popular symphony programs. I would say, in short, that we did everything to strengthen the entertainment. We even presented versions of musical comedy, light opera, like *The Mikado*, things of that nature. We covered, I think, practically every field. We presented rodeos, horse shows—well, just about anything you can think of in the way of entertainment we gave them, because we had a widespread appetite in amusements which were to be satisfied.

Q. What experience during that period of operating the Fair did you gain from what are known as bands, or dance bands?

A. We had a building called the Recreation Building but [432] we had difficulty in finding a reason for it. The building had been built. We finally stumbled onto a policy, a ballroom policy. I say "stumbled" because it was quite an accident. We had booked a band. We had nothing to do with it, so we put it in the Recreation Palace. The thing was phenomenally successful. I mean by that, the youngsters paid their attendance outside of the grounds, paid their attendance into the grounds and paid another admission to get into the ballroom to

(Testimony of Wayne Dailard)

hear those bands. So we instituted a policy then and for the remainder of the season of name bands, and some local bands, and we carried on the ballroom policy because it was highly successful. I say it was highly successful, for this reason: they first had to pay an admission to get into the grounds and then they had to pay an admission into the ballroom in order to dance, and during those times it was quite a tariff for youngsters to lay down \$2.00 apiece to get in to dance.

That is where we gained our first knowledge of the appetite in San Diego for name and semi-name attractions.

Q. After the Fair closed you took over what is known as Mission Beach? A. That is correct, sir.

Q. And who had operated it previous to that time?

A. Immediately previous to us, the City of San Diego.

Q. And I believe it had been testified here by Mayor [433] Knox that that was a failure?

A. It was, notoriously.

Q. In 1940, I believe it was operated by you, Mission Beach?

A. If my memory serves me correct, we had a management agreement, a short-term management agreement which started in 1939. I may be wrong about this, but I think our initial lease started in 1940. You are correct; but we had a short-term management agreement ahead of that, and it was just for a few months.

Q. What type of bands did you use out at Mission Beach during the two years?

A. Well, we used about everything out there. We used shows; we used attractions; we used the best bands

(Testimony of Wayne Dailard)

that we could buy; we used local bands; we used Hill-billy bands; but none were successful.

Q. What was your observation as to the drawing power of so-called swing bands of the type known here and referred to as—oh, the Guy Lombardo type and that type of band?

A. The weather conditions—I point that out because there is about 7 months a year at Mission Beach that the weather is adverse to consistent operations—with favorable weather conditions, with everything being in our favor, name bands did modestly well. In some instances they would make a few dollars and in some instances they only broke even— [434] even in the best conditions. That is a matter of record, that we have the grosses.

Mr. Christensen: What was the last part of that answer?

(Last part of answer read by the reporter.)

The Court: I do not understand that term.

Mr. Christensen: I do not understand the term.

The Witness: Well, we have the grosses. He is asking about a certain period at Mission Beach.

The Court: Do you mean gross returns?

The Witness: We have those, yes, our gross returns on it.

The Court: I understand that you are referring to gross returns.

Q. By Mr. Doherty: Did you make a profit during those two years that you were using this type of operation?

A. No, sir.

(Testimony of Wayne Dailard)

Q. Were you experimenting during those two years as to the type of operation that would be a success at Mission Beach? A. Yes, sir.

Q. And after those two years of experimentation, what did you conclude were the types of entertainment that would be not only well attended and patronized, but would be profitable?

A. We were never able to influence what we refer to as [435] the consistent high grade of business into Mission Beach. There were many factors involved in it: The fact that the plant is 7 or 8 or 9 miles from San Diego; the fact that previous to any of our entry into the Mission Beach situation, the place had gained an extremely rugged name—I mean a very bad name. We were never able to overcome that one phase.

Now, we depended in San Diego upon the youngsters from good families. That has been our life blood there, even at Pacific Square, up until the middle of 1944, when, of course, the town was taken over by servicemen. But we had depended, by the date that you are discussing now, upon these youngsters. We found that we could bring them into the Fair, even at an exorbitant price; but we were never able to bring them into Mission Beach, even with attractions that they wanted to see.

We even went so far as to put out surveys. I know practically everyone in the community, and we put out surveys to determine why John Jones' son and daughter did not attend Mission Beach; and we were told that they did not like the atmosphere and environment.

Mr. Christensen: Just a moment. I am going to object to this as hearsay.

(Testimony of Wayne Dailard)

The Witness: It is not hearsay. We were told it.

The Court: Mr. Dailard.

The Witness: Excuse me. [436]

The Court: You just let the lawyers and the court take care of the legal phases and do not interpose your own ideas when counsel makes an objection.

The Witness: Thank you, sir.

The Court: I think a great deal of that was repute, which he was not asked for. He was asked for his own experiences, and that is part of his testimony with reference to cross-examination. You will confine yourself to the question, now, and we will not be delayed.

Mr. Christensen: Will your Honor strike it?

The Court: That part, ladies and gentlemen, in which it was reported and the repute was, etc., will go out, and you will disregard it.

Q. By Mr. Doherty: Now going back a minute, Mr. Dailard, after you had been operating at Mission Beach a time, did you—I withdraw that. Was there any large downtown dance hall or ballroom in existence at that time, when you first took over Mission Beach?

A. No, sir.

Q. What steps did you take then, and when, to build Pacific Square?

A. In 1940. I had previously owned the property at Pacific and Ash Street, and in 1940 we started the erection of the present Pacific Square room.

Q. And when was it opened? [437]

A. December 28, 1940.

(Testimony of Wayne Dailard)

Q. What type of entertainment did you use in Pacific Square from the time it opened?

A. We confined ourselves—I can answer that by saying this: That we have had no change. We have never changed policy in Pacific Square since the first week's opening. We opened up with name bands, semi-name bands and local names; and we have carried that policy through for the duration of our operations.

Q. How did that operation of Pacific Square compare with the operation that you finally determined upon as the best operation for Mission Beach?

A. Well it was far more profitable, because our location was in our favor and the fact that the plant was new and fresh.

Q. And did you always get good responses at Pacific Square for what we call name dance bands?

A. I can answer that by saying that we never had an unprofitable week. Our records show that we have never had a red week in Pacific Square.

Q. What type of entertainment from the standpoint of bands or other form of entertainment did you conclude, from your experience, that you found the most attractive for Mission Beach in 1943, '44, '45?

A. Well, in 1942, as an additional experiment, we brought [438] in a cowboy band, a band called Bob Wills. We were solely responsible for Bob Wills coming to this territory. We brought him here from Oklahoma, and we had an immediate tremendous success with Wills, and we immediately adopted the western type of music for Mission Beach. The class of people that chose to attend Mission Beach understood that. It

(Testimony of Wayne Dailard)

was no effort to bring them in for something that they understood.

Q. How long did you continue that policy at Mission Beach?

A. We continued that until our lease expired.

Q. Was Bob Wills secured through the services of the Music Corporation of America?

A. He was later. They took him under management. We brought him to this country and he chose them as his agent.

Q. In other words, you hired him direct at first?

A. Yes. I think we had—I would have to consult records for accuracy, but I think we had Wills for one year before he went under the wing of any agent.

Q. And 1942, 1943, 1944, and up to the time you sold in 1945, you then specialized at Mission Beach in that type of entertainment, the so-called western bands?

A. That is correct. We deviated occasionally. I don't think we deviated from the western policy over two or three times during that period of time, maybe four times. [439]

Q. How did the success of the operation, financially, compare under the new type of operation with what you had been previously using?

A. Well, the figures will answer that. I lost in the first two years' operation of Mission Beach approximately \$36,000; and the last three years of our operations were all profitable, as has been submitted here.

Q. By those figures, the same figures which were read in evidence on the Mission Beach for the year 1942, you made about \$50,000 at Mission Beach?

A. Yes, yes.

(Testimony of Wayne Dailard)

Q. And that was the first year you began using this new type of entertainment? A. That is right.

Q. And the year 1943 you made \$72,759.66?

A. That is correct.

Q. And was that under this same type of operation?

A. Yes.

Q. And in 1944 you made \$79,924.53 at Mission Beach? A. That is correct.

Q. Now, in 1945 you only operated the first six months? A. In 1945?

Q. Yes.

A. We did not operate the first six. That shows the first— [440]

Q. Pacific Square, yes? A. That is right.

Q. I got confused. Mr. Finley operated it during 1945. You know Mayor Knox? A. Yes.

Q. Did you have a conversation with him in 1944 respecting a renewal of the lease that you had on Mission Beach? A. Yes.

Mr. Christensen: To which we object as not proper cross-examination.

The Court: Well, let's see where the foundation is. Where is the foundation for it, Major?

Mr. Doherty: Well, there was no question asked this witness on direct, I will admit, respecting the conversation with Mayor Knox; but the whole field of the operation was opened up.

The Court: No. That is defensive matter, unless you laid the foundation. Sustained.

Mr. Doherty: I never disobey your Honor.

The Court: Don't do it now.

(Testimony of Wayne Dailard)

Mr. Doherty: May I answer your Honor's question what the foundation was for it?

The Court: No, unless there is some foundation. You have a transcript, a daily transcript, and so has the court. [441]

Mr. Doherty: The exhibit, your Honor, is the basis for it, the offer that went into evidence. Now, I am entitled, I think, to inquire into the preliminaries.

The Court: You are entitled to inquire into the preliminaries at the proper stage of the case, undoubtedly, and this is not that stage. Objection sustained.

Mr. Doherty: Will that ruling, then, apply—so I will not run counter to your Honor's ruling—to all questions respecting the testimony here of the other two city officials and the Lieutenant Commander about conditions at the Beach?

The Court: The scope of the ruling is just as announced, and is not anticipatory of anything.

Q. By Mr. Doherty: Mr. Dailard, there was introduced yesterday an agreement or an offer by you to the City Council at San Diego; and I think the day preceding, there were introduced some other documents which I wish to show you. Please look at Defendants' Exhibit E, being the letter from Music Corporation of America on November 4, 1941, addressed to Pacific Square Corporation, and I will ask you if you identify that document?

A. Yes, sir.

Q. And was that the arrangement between you and the Music Corporation of America respecting bands at Pacific Square and Mission Beach?

A. That is so.

[442]

(Testimony of Wayne Dailard)

Q. I will show you Defendants' Exhibit F, being an agreement dated the 3rd day of May, 1944, and ask if you can identify that? A. Yes.

Q. What other agreements, either oral or written, did you have with Music Corporation of America respecting the use of their services?

Mr. Christensen: To which we object as not proper cross-examination.

The Court: Overruled.

A. We had no other agreements.

Q. By Mr. Doherty: Did you have any written or oral agreement with any of the officers or employees of Music Corporation of America other than as is contained in those documents respecting the use of facilities and service of Music Corporation of America?

A. No, sir.

Q. And when I say "officers or employees" I mean these gentlemen who are defendants in this matter?

A. No, sir.

Q. Was that the only and sole agreement you had with Music Corporation of America respecting their services and facilities? A. Yes, sir.

Q. I will show you now Plaintiff's Exhibit 6, being [443] your offer to the City of San Diego, which was read into evidence yesterday. Who prepared that document? A. My secretary and a local attorney.

Q. Were they residents of San Diego? A. Yes.

Q. What connection, if any, did the Music Corporation of America or any of its officers or employees have in preparing that document? A. None.

(Testimony of Wayne Dailard)

Q. Were they ever consulted by you or any of your employees? A. No, sir.

Q. Did they know, to your knowledge, that such an offer was being made—I mean the contents of the offer?

A. They knew nothing of the contents. I was trying to think whether they even knew for sure that we were going to bid. I don't know. They might have known it.

Q. That is, might have known that you were going to bid? A. Yes.

Q. Did you ever show that document to any of the employees or officers of Music Corporation of America? A. No, sir.

Q. I will direct your attention to one sentence in this document; it is on page 4, in subparagraph 5 of Exhibit [444] 6: "We have an agreement with the Music Corporation of America granting to us the exclusive rights of presentation in San Diego County of attractions controlled by said corporation." Were you referring to Defendants' Exhibits E and F in that statement?

A. Well, frankly, I didn't even know that statement was in there until it was brought out during this court trial.

Q. I will call your attention to another statement in the same paragraph, on page 4:

"The Music Corporation of America controls the booking of ninety-five per cent of all name bands in this country."

Did you ever consult the Music Corporation of America respecting that statement? A. No, sir.

Q. Or any of its employees or officers?

A. No, sir.

(Testimony of Wayne Dailard)

Q. When did you first know or did it come to your attention that statement was in there?

A. When the plaintiff's attorneys took my deposition.

Q. And when was that?

A. It is a matter of record. I don't know.

Q. Didn't you read this over before you turned it in to the City Council? [445]

A. Strange as it may seem, I did not, sir.

Q. Did the Music Corporation of America or any of its officers or employees ever say to you that they controlled any bands? A. No, sir.

Q. Did they ever say to you that they were employment agents or representatives of ninety-five per cent, or any other per cent, of name bands? A. No, sir.

Q. That was a matter, then, inserted by your secretary and your attorney without consulting you, or, so far as you know, with defendants?

A. That is correct, sir.

Q. This contract, Exhibit F, I will call your attention to the last paragraph, I believe, in it—it is next to the last paragraph—it is on page 5, Mr. Reporter, and designated 9. It reads, Mr. Dailard:

“This agreement is personal to the parties hereto and is not transferrable to any other parties, firms, persons or corporations.”

You are familiar with that provision? A. Yes.
[446]

Q. At the time of your sale to Mr. Stutz of your properties, that is, the Pacific Square, did you have any

(Testimony of Wayne Dailard)

conversation with anybody representing Music Corporation of America about that part of the contract?

A. Yes.

Q. What was said?

Mr. Christensen: To which we object as hearsay and not proper cross-examination.

The Court: Objection sustained.

Q. By Mr. Doherty: Look at Defendants' Exhibit E, the letter of November the 4th. Can you give me the circumstances of how that letter happened to be written?

A. We were—this was in connection with Pacific Square—we had issued or we had put on the market an issue of stock, and one of the resisting factors that the brokerage firm was being confronted with was the fact that we had nothing to assure, after the plant was built, that it could be serviced with bands. So I went to—I can't recall the first contact I made with Music Corporation of America, and asked them if they would give me something in writing that they would service the account, everything being as it should be, and we finally arrived at this option of first refusal. That was in 1941. We didn't feel like investing in a plant unless we had some, at least, fairly tangible assurance that some one would consider serving us. The reason for that [447] situation was that—

Mr. Christensen: To which we object as not responsive and hearsay.

The Court: I don't see how they could cross-examine on that. Read the question, please.

(The question was read.)

The Court: That is a broad question.

(Testimony of Wayne Dailard)

Mr. Doherty: Conspiracy, your Honor, is a broad charge.

The Court: Just read the last part of his answer, when he was interrupted.

(The portion of the answer referred to was read.)

The Court: Yes, he is charged as a co-conspirator by the plaintiffs in the case. Objection overruled. Proceed.

The Witness: Will you read my answer, and the question, please?

(The record referred to was read.)

The Witness: (Continuing)—the band leaders we felt might be skeptical about playing a new situation. I say we felt that. That seemed to be the feeling of the entire group interested in building Pacific Square, because there had been no precedent.

Mr. Christensen: Just a minute. May that be stricken, your Honor, as a conclusion and opinion, predicated on hearsay?

The Court: If you will confine your answer, Mr. Dailard, I want to give you the widest scope, so far as you are [448] concerned, but confine it to yourself. If you can use the singular personal pronoun instead of "we", it would more accurately reflect the answer that you should give to that question.

The Witness: Am I still answering that?

The Court: Yes. We will have the witness' answer read. Now, if you understand the rule, it is that we want you to speak just as to yourself and to use the personal pronoun "I", if you can, because it destroys the sequence and continuity of the narrative to be interrupted. You should confine yourself to your own activities, and,

(Testimony of Wayne Dailard)

as I say, instead of using the plural personal pronoun "we", use the first person.

Now, read the answer, please.

(The answer was read.)

The Witness: I think that answers it.

Mr. Christensen: Your Honor, may that latter portion be stricken?

The Court: That part where he purports to state how others felt may go out, but the part with respect to himself, of course, will remain.

Now, will you proceed, and we will not interrupt you again if you will bear in mind the observation and ruling of the court.

The Witness: Thank you, sir. [449]

The Court: Proceed. Have you finished your answer?

The Witness: Yes.

Q. By Mr. Doherty: Mr. Dailard, did Music Corporation of America, and when I say "Music Corporation of America" I mean the defendants or their employees, seek you out and ask you to give them such an arrangement? A. No.

Q. At whose instigation or suggestion was the letter written? A. It was my suggestion.

Q. Did you have several conferences with them about it? A. I think probably six or seven.

Q. During any of those conferences, before entering into the signing of the letter, or at any time since that time, have there ever been any discussions or conversations between you and the defendants, or any other official or employee of the Music Corporation of America,

(Testimony of Wayne Dailard)

that the purpose of that agreement was to exclude competition in the dance or entertainment business in San Diego? A. No.

Q. Was it ever discussed? A. No.

Q. Mr. Dailard, did it ever come into your head that any charge like that would be made against you with respect to that agreement? [450] A. No, sir.

Mr. Christensen: To which we object as immaterial to any issue. It is his opinion or conclusion.

The Court: No, it isn't his opinion. It is his intent. Overruled.

The Witness: No, sir.

Q. By Mr. Doherty: I direct your attention to some of the advertisements that were introduced here yesterday. They are Plaintiff's Exhibit 7. Will you please look at them, Mr. Dailard? A. Yes, sir.

Q. Would you read the first opening two lines on that?

A. "Do not be confused. Pacific Square will continue to present 90 per cent of all name bands."

Q. What was the reason for the statement or advertisement, "Do not be confused"?

A. Mr. Finley had presented an ad earlier in the week saying that—

Mr. Christensen: Just a minute. To which we object as not the best evidence here.

Mr. Doherty: Well, I will give you the best evidence.

Mr. Christensen: Thank you.

The Court: While you are looking for that, I think we will take our recess for a few minutes. Ladies and

(Testimony of Wayne Dailard)

gentlemen, remember the admonition, and keep its terms inviolate. Occupy [451] the jury rooms, please.

(A short recess was taken.)

The Court: All present. Proceed.

Mr. Doherty: Miss Reporter, will you please read the last question, the one to which an objection was made?

(The record was read.)

Mr. Doherty: I have shown to counsel for the plaintiff ads in the San Diego newspapers in the issues of Friday, May 11th.

Q. By Mr. Doherty: Directing your attention, Mr. Dailard, to one ad, I will ask you if you recognize that advertisement? A. Yes.

Q. We had better finish with that one first. Is that one of the ads you had in mind when you ran the ad that is marked Plaintiff's Exhibit 7, and which is before you?

A. Well, not specifically. This isn't the specific instance that I had in mind.

Q. I will show you now another advertisement in the San Diego paper, Friday, May 11th, and ask you if you recognize the ad. (Handing document to witness.)

A. Yes, sir.

Q. Is that the ad you had in mind when you ran the ads set forth in Plaintiff's Exhibit 7?

A. Yes, this ad and variations of this ad. [452]

Mr. Doherty: May we offer in evidence, your Honor, the first document as Defendants' Exhibit—G, is it?

The Clerk: G, yes, sir.

Mr. Doherty: I have shown it to counsel for plaintiff.

Mr. Christensen: Yes, you have.

(Testimony of Wayne Dailard)

The Court: So ordered.

(The document referred to was marked as Defendants' Exhibit G, and was received in evidence.)

The Court: That is 1945. Was it May, 1945?

The Witness: Yes, your Honor.

Mr. Doherty: Yes, your Honor, Friday, May 11, 1945.

The Court: So ordered.

Mr. Doherty: The other advertisement is in another newspaper. That will be H?

The Clerk: Defendants' Exhibit H.

(The document referred to was marked as Defendants' Exhibit H, and was received in evidence.)

Mr. Christensen: Mr. Doherty, could we have just the single sheet in which that appears, because it might possibly encumber the record; if it will serve your purpose.

The Court: Are they in the same paper, "The Journal," or were they in both "The Journal" and "The Tribune"?

The Witness: I think they ran in both "The Journal" and "The Tribune."

The Court: That looks like "The Journal." [453]

Mr. Doherty: This is "The Journal," I am satisfied.

I have torn off, Mr. Christensen, the sheet with the ad on the reverse side, but they don't have any date line on it or the name of the paper.

The Court: Probably the red sheet has.

(Testimony of Wayne Dailard)

Mr. Christensen: I will agree with you on it in a moment, Mr. Doherty, that it is in the "San Diego Journal," and it is the issue of Friday, May 11, 1945.

Mr. Doherty: That is Exhibit H?

The Clerk: Yes, sir.

Mr. Doherty: May I read just the headlines to the jury?

The Court: Yes.

Mr. Doherty: Exhibit G is an advertisement, "Frankie Carle opens tonight at Mission Beach. Frankie Carle leads the parade of world's greatest dance bands to the West's most spacious ballroom. Now . . . Dancing Every night! Gala summer opening tonite. Dancing 8:30 to 1. 'The Golden Touch of' Frankie Carle, his piano and his orchestra, featuring Paul Allen, Lee Columbo, lovely Phyllis Lynne. Continuous dancing with Paul Martin and his music featuring The 3 Barries, sensational singing trio. Admission \$1.25, tax included."

Now, the other advertisement, Exhibit H:

"Tonight gala summer opening. Now dance nitely Mission Beach. New home of big name bands. The Golden Touch of Frankie Carle, his piano and his orchestra," and some more. [454] "Mission Beach Ballroom and Amusement Park."

Q. By Mr. Doherty: What particular part of that advertisement, Mr. Dailard, inspired you or caused you to run the ads which I have already referred to here, Plaintiff's Exhibit 7?

A. The part that refers to the new home of big name bands.

(Testimony of Wayne Dailard)

Q. Now, will you look at Plaintiff's Exhibit 7, and look down on the list of bands which you state will play in Pacific Square, and tell me whether or not those are bands represented solely or entirely by Music Corporation of America?

Mr. Christensen: To which we object as calling for his conclusion or opinion.

The Court: I think he is qualified to answer. Overruled.

The Witness: Will you read the question?

(The question was read.)

The Witness: No, sir.

Q. By Mr. Doherty: Are there bands there represented by other agencies? A. Yes, sir.

Q. During your operation of Mission Beach and Pacific Square, did you use the facilities of other agencies?

A. Yes.

Q. During your entire operation? [455]

A. Yes, sir.

Q. Did you consult the Music Corporation of America, or with any of its officers or employees, or any of the defendants, before that advertisement known as Exhibit No. 7 was put in the paper? A. No, sir.

Q. To your knowledge, did they see it?

A. No, sir.

Q. The statement at the bottom of the ad, referring against to No. 7, "The Music Corporation of America bands," did you consult any of the defendants or the corporation, or any of its employees, when you put that in?

A. No, sir. That was a part of our regular signature.

(Testimony of Wayne Dailard)

Q. By the way, how many times before this lawsuit started had you met Mr. Stein, the president of the Music Corporation?

A. I met Mr. Stein the day of—no, the day after this trial opened for the first time.

Q. There is one question I forgot to ask you, Mr. Dailard, this morning. This letter of November 4, 1941,—that is Defendants' Exhibit E, isn't it? A. Yes.

Q. Was there a previous letter to that one in existence? A. There was a very vague letter, yes.

Q. Have you been able to find it? [456] A. No.

Q. Had that previous letter a reference to an arrangement with Music Corporation of America and the bands?

A. The substance of the letter was that if and when this ballroom would open, that they would service us.

Q. And that was when you were building the plant?

A. That is correct.

Q. While these contracts were in effect, have you ever dealt directly with band leaders, without going through M.C.A., or any other agency?

A. Many times.

Q. And made contracts direct with them?

A. Yes.

Mr. Doherty: I believe rather than take up the time of the court, Mr. Christensen, may it be agreed and stipulated that in all these cases each engagement of a band leader at a ballroom is a separate individual contract? In other words, there is no blanket arrangement, but they sign for an engagement, for each individual showing or presentation at a ballroom?

Mr. Christensen: I don't believe that is a correct statement.

(Testimony of Wayne Dailard)

Q. By Mr. Doherty: Mr. Dailard, did you ever, in all your dealings down there, enter into any blanket contracts where you would buy or agree to take or engage a whole [457] series of bands in one contract?

A. No.

Q. Was each individual engagement a separate contract on the form prescribed by the Musicians Union?

A. That is correct.

Q. My associates have handed me some pictures of Pacific Square taken from another position. I have shown them to counsel. I will ask you to examine them, to look at them, and ask you if they are true representations of Pacific Square from another viewpoint. (Handing photographs to witness.)

A. Yes, sir.

Mr. Doherty: May we offer those in evidence, your Honor?

The Court: Yes.

The Clerk: Exhibit I. As one exhibit?

Mr. Doherty: I think we might as well throw them in as one exhibit. That will be Defendants' Exhibit I?

The Clerk: Yes, sir.

The Court: How many are there?

The Clerk: Five, your Honor.

The Court: So ordered. Defendants' Exhibit I.

(The documents referred to were marked as Defendants' Exhibit I, and were received in evidence.)

Mr. Doherty: Before you clip them together, may I show them to the jury, your Honor? [458]

The Court: Yes.

(The photographs were handed to the jury.)

(Testimony of Wayne Dailard)

Mr. Doherty: While the jury looks at that series of pictures, your Honor, I have a series of pictures of the interior of Pacific Square. May we get through with them at the same time? I have shown them to counsel.

Mr. Christensen: Yes. Go right ahead.

The Court: Yes.

Q. By Mr. Doherty: Mr. Dailard, I am showing you a series of pictures which purport to be pictures of the interior of Pacific Square, and ask you if those photographs are a true representation of the interior of that dance hall. (Handing photographs to witness.)

A. Yes, sir.

Mr. Doherty: May we offer them, your Honor, as Defendants' Exhibit J?

The Court: How many are there?

The Clerk: Six, your Honor.

Mr. Doherty: Six in number.

The Court: Any objection, gentlemen?

Mr. Christensen: No, your Honor.

The Court: So ordered.

(The photographs referred to were marked as Defendants' Exhibit J, and were received in evidence.)

Mr. Doherty: May I show them to the jury, your Honor, [459] while they are looking at the others?

The Court: Yes, sir.

(The photographs referred to were handed to the jury.)

Q. By Mr. Doherty: Have you before you the advertisements on the smaller sheets? Plaintiff's—this one here (indicating), I believe.

The Court: Exhibit 7?

Mr. Doherty: Yes, Exhibit No. 7.

(Testimony of Wayne Dailard)

Q. By Mr. Doherty: Where did the idea of "90 per cent of all name bands" originate?

A. We originated and used that slogan in 1941, and the reason for it was that at the time we opened our youngsters had been coming up to the Palladium, and they expressed certain doubts as to whether or not we were really going to bring the big attractions to San Diego.

Mr. Christensen: To which we object as calling for hearsay as to what other people had done, or said, or expressed; particularly, their doubts.

The Court: I think his reasons are material. I don't know that it is necessary to detail the source of the knowledge, Mr. Dailard, but anything that is operative in your mind is proper to disclose. I don't know whether we want to bring these folk that you call youngsters up here or not, give the other side the opportunity to do that, and it isn't necessary to go into the details of that matter. Anything [460] that was operative in your mind as to the matter is proper but narrating as to youngsters or young people, or anything of that kind, would not be essential in anything of that kind.

The Witness: All right, sir.

The Court: Do you understand that?

The Witness: Yes. Where was I? Will you repeat my answer?

Mr. Doherty: And repeat the question, please.

(The record was read.)

The Witness: (Continuing) We found it necessary to coin a slogan.

(Testimony of Wayne Dailard)

Q. By Mr. Doherty: I will put it this way, Mr. Dailard, and see if it will help you: Was that sort of an entertainment ballroom in San Diego, the type of Pacific Square, something that was new to that community? A. Yes.

Q. Did you receive complaints or inquiries or suggestions from any of your customers that had patronized Pacific Square respecting the type of entertainment you would or would not have? A. Yes.

Q. And what was the nature of those suggestions or inquiries you received?

A. The nature of the inquiries— [461]

Q. I didn't mean to give the names of individuals, or the groups.

Mr. Christensen: That is objected to as being immaterial and calling for hearsay.

The Court: Overruled. He has modified the question to make it proper.

Mr. Doherty: Will you read the question?

(The record was read.)

The Witness: A. The inquiries were, "Who is coming? What will your permanent policy be?" So I coined this phrase, keeping in mind such phrases as, "When a better car is built, Buick will build it," or "Good pipes smoke more Prince Albert tobacco than any other tobacco." We had all the product available for the community, because we had one institution, so we coined this phrase and sustained it throughout our operation. Our ads will evidence we used this constantly since Pacific Square opened, "90 per cent of all name bands will play Pacific Square."

(Testimony of Wayne Dailard)

Q. By Mr. Doherty: Irrespective of the agency from which they came? A. That is true.

Q. I will show you Plaintiff's Exhibit 9, which is a list of bands playing at Mission Beach and Pacific Square, and ask you to start in the year 1943 and go through that entire year, and tell me how many bands played at Mission Beach during [462] 1943 that were not western or cowboy or hill-billy bands, whatever classification you want to give them, those that were not of that class, at Mission Beach? Take each year separately, Mr. Dailard,—1943?

A. You asked 1943 and 1944?

Q. No, take them separately. Take 1943; then take 1944.

A. There were four bands in 1944 that were not western bands, according to this list.

Q. What about 1943? I started you there at the top of the list of 1943. I wish you would check it again to see if your tally conforms to mine.

A. We had one band in 1943 that was not a western band.

Q. And how many in 1944? You state four?

A. Four. That is correct.

Q. You are confining your examination now just to Mission Beach? A. Yes, sir.

Q. On February 3, 1945, Mr. Finley opened at Mission Beach, and you were still operating Pacific Square at that time, were you not? A. Yes, sir.

Q. Which band did you have or what band did you have at Pacific Square on February 3, 1945?

A. Vaughn Monroe. [463]

(Testimony of Wayne Dailard)

Q. What is that again? A. Vaughn Monroe.

Q. And what agency was that band secured through?

A. The William Morris.

Q. And what band did Mr. Finley have over at Mission Beach? A. Henry Busse.

Q. What agency was that secured through?

A. William Morris.

Q. In this statement of profits from Pacific Square, Mr. Dailard, you gave us totals for the years of 1942, '43, '44, and '45. They were read into evidence yesterday when Mr. Christensen was examining you. What portion of those profits were earned the first six months, and what portion the second six months, from your observation?

A. Well, I have always contended that we had three summer months and three winter months, and that there was very little variation over a six months period. I think that would be proven if we checked it accurately. I think there is about an even division.

Q. In other words, as of July 1st you would have made half of your earnings?

A. I would say so, yes.

Q. Now, it shows here in 1944, from the figures you testified to yesterday, that Pacific Square made a profit for [464] the entire year of \$169,582.28, and in 1945 for the first six months your profits were about \$30,000.00. How do you account for the rapid drop of earnings of Pacific Square during that period, the first six months of 1945?

A. Well, there are probably two factors. The first factor, of course, Mr. Finley's operation at Mission Beach. That undoubtedly took some of our gross. The

(Testimony of Wayne Dailard)

second, and probably synonymous with that or equally important, was the fact that the war workers, or, the war plants had started laying off tremendous amounts of men during that period. I think the two factors would contribute possibly equally to that.

Q. Have you been familiar with the operation, just in a general way without knowing the details, in the last six months of 1945, from your observation?

A. I know very little about it, sir.

Mr. Christensen: To which we object as calling for his conclusion or opinion.

The Court: He said he knew very little about it, Major.

Mr. Doherty: Yes, sir.

Q. By Mr. Doherty: Have you been around to observe it?

A. I checked the operations, yes.

Q. Has it been on the upgrade or downgrade?

A. Deviation—

Mr. Christensen: To which we object as calling for his [465] conclusion or opinion.

The Court: Yes, sustained.

Mr. Doherty: I will withdraw it.

Q. By Mr. Doherty: What was the weather condition out at Mission Beach during a part of the year? Was there always good weather at Mission Beach?

Mr. Christensen: To which we object as indefinite and uncertain, as to when in time.

Q. By Mr. Doherty: Well, during your period of operations?

A. Our experience at Mission Beach was that the only dependable period was during the summer months, from May 30th until Labor Day, where you could rely

(Testimony of Wayne Dailard)

upon weather. We have had high tides that flooded the ballroom in the winter-time. We have had extremely foggy weather, where you could not find your way out there. Now, that is prevalent in any beach area, and it is not isolated to San Diego. The weather is very uncertain in the winter months.

Q. What effect does it have on the attendance?

A. It has only this effect, that if you get a fog that starts at 6:00 o'clock, and usually it will hold from 6:00 to 10:00 o'clock at night, then you have no business, because it is unsafe driving.

Q. What means of transportation was there from the city of San Diego on out to Mission Beach? [466]

A. When we first started up there, there was a street car line. That has since been supplanted by a bus line.

Q. The bus line is now operating?

A. That is true.

Mr. Doherty: May I ask counsel a question? I am skipping around, your Honor, in view of your Honor's ruling on some questions I wanted to ask, and that has caused me to be a little delayed.

The Court: What is the distance of the Mission Beach Amusement Center from the metropolitan area of the city of San Diego?

The Witness: It is about eight miles.

The Court: What is the distance of the Pacific Square Gardens from the metropolitan district of San Diego?

The Witness: About five blocks.

Q. By Mr. Doherty: Mr. Dailard, one question is suggested. On direct examination Mr. Warne states that you testified that on New Year's Day, I believe it was,

(Testimony of Wayne Dailard)

you played at Pacific Square Barnet, and at Mission Beach Keaton or Kenton, is that correct, or some other so-called name band?

Mr. Christensen: In what year, sir?

The Witness: I remember one year playing Charlie Barnet and Harry Owens.

Q. By Mr. Doherty: Well, whichever it was.

A. Yes. I think that was our last New Year's. [467]

Q. That was New Year's, 1945?

A. That is correct.

Q. What was the occasion of playing other than western music, so-called, at Mission Beach on that occasion?

A. Well, of course, on New Year's Eve you have got more business than anybody can take care of in almost any community, if the weather is favorable, and if I remember, we had no western band of any consequence available. Therefore it was necessary that we play a modern type of band.

Mr. Doherty: I believe that is all at this time. [468]

Redirect Examination

By Mr. Christensen:

Q. Both Barnet and Owens are M. C. A. bands?

A. That is correct.

Q. Your Pacific Square is located just one block from the waterfront, isn't it?

A. Approximately, yes.

Q. Approximately the same distance as the Mission Beach ballroom is located from the waterfront?

A. That is correct.

(Testimony of Wayne Dailard)

Q. And the fog you spoke of is just as prevalent at Pacific Square as it is at Mission Beach, isn't it?

A. I believe that is incorrect, sir.

The Court: Mission Beach is located on the ocean frontage?

The Witness: That is right; and we are on a land-locked, still-water harbor.

The Court: You are on the San Diego Bay, are you?

The Witness: That is correct. We are several miles from the ocean.

Q. By Mr. Christensen: As a matter of fact, the airports are right close by there?

A. That is correct.

Q. To Pacific Square? A. That is right. [469]

Q. And fog is so bad that flights are cancelled with great frequency, are they not, sir?

A. That I wouldn't know.

Q. There is a lot of fog there at Pacific Square, isn't there?

A. That is undeniable. I am not a weather expert. I imagine we could get vital statistics on that. Your question to me was: Is the fog as bad at Pacific Square as it is at Mission Beach? And I said, "No," I didn't think that was the case.

Q. You do not believe it is quite as heavy?

A. Certainly not.

Q. Now, you were asked there concerning the list of bands listed under your ad there. It says, "Do not be confused." You say those are not all name bands?

A. I did not say that.

Q. I beg your pardon. They are not all M. C. A. bands? A. That is correct.

(Testimony of Wayne Dailard)

Q. I believe there are about 27 of them listed there?

A. Yes.

Q. Not over three of them are not M. C. A. bands; that is true, isn't it?

A. I do not know. Do you want me to check them?

A. Well, look.

A. I think there are four. [470]

Q. Will you name them?

A. I am not—and possibly five. I would have to consult records to verify it.

Q. Name the bands that you are referring to.

A. Well there is Henry Busse, Charlie Spivak, Vaughn Monroe, Freddie Slack.

Q. Who represents Freddie Slack?

A. Well, that I don't know. That is the one I said was optional upon a check of records. And I am not positive that Hal McIntyre is under Music Corporation. That I would have to check.

Q. How did you know that Slack was coming, then?

A. Well, isn't it reasonable to assume that if a band has played your place since they were a band, that they would return and play it? Isn't that a reasonable assumption?

Q. I really wouldn't know, Mr. Dailard.

A. Well, I am suggesting that as an answer.

Q. Had you contracts with Henry Busse to appear at the time you put that ad in? A. No.

Q. Had you any contract with Spivak to appear at the time?

A. That I don't know without consulting records.

(Testimony of Wayne Dailard)

Q. Had you a contract with Monroe to appear there at the time you put the ad in? [471]

A. I think he was booked, yes. I am not positive of that, but I believe he was.

Q. Well, it is quite the practice, is it not, to book an orchestra for several weekends? A. No.

Q. At one time?

A. No, it is not; but it is a prominent practice—you can take any motion picture theatre in America, and at the season of September 1st they will advertise the pictures that are not even made as coming; they will advertise the company that is even going to make the picture, appear in the picture. They tell that, not because they have paid them, but because they have been doing business with the companies and they rely upon the company to continue and serve them. I have the same reliance that I put in Music Corporation, in William Morris and the other agencies when this ad was run, not because, when Mr. Finley came into the picture, that I thought they were all going to discontinue serving me. That does not bear out the picture of good business.

Q. You knew that every M. C. A. band that was available in that area, that you would take, didn't you?

A. I knew that I would take them, everything being equal and the prices not being exorbitant.

Q. Well, did you ever turn any M. C. A. band down because of price? [472]

A. No, not because of price, but we have, I think, on several occasions turned M. C. A. bands down and put in competitive bands. I think that is a matter of record.

(Testimony of Wayne Dailard)

Q. Tell me the name of one that you turned down?

A. I don't know. I have booked seven or eight hundred bands in the last few years. How can I remember them? How can I be expected to remember? But I do know it has happened.

Q. Of these approximately 700, at least 90 per cent of them were M. C. A. bands, weren't they?

A. That I don't know. That is a job for a statistician.

Q. In any event, you use the best bands that are available at all times?

A. Regardless of whose agency it came from, we used the best attractions we could buy, regardless of the agency. Our record of operation will prove that. Our record of operation will also prove that in many cases, as I have stated before, we have taken M. C. A. bands out and put in competitive bands because they were stronger attractions.

Q. What I am getting at, and all I asked you was, that you use the very best bands available at all times?

A. That was our policy.

Q. And the biggest name bands that you could get?

A. That is right.

Q. And that was true at the Fair as well as at the [473] Square, wasn't it?

A. Our policy—no. Our policy at the Fair was big attractions, whether they were bands or what they were.

Q. Well, but when you used bands?

A. The best available, yes.

Q. You find that that is necessary in order to successfully operate?

A. I would not say that, sir.

(Testimony of Wayne Dailard)

Q. This man, Emil Klicka, one of the men you say prevailed upon you to take over the Fair—

A. Yes.

Q. —you later took him in as a partner, didn't you?

A. Yes. He came up for re——

Q. I only asked you if you did. A. Yes.

Q. Now, you say that you had never met Mr. Stein before the trial commenced here?

A. That is correct.

Q. You are sure of that?

A. Well, certainly, or I wouldn't state it.

Q. On the other hand, you would call Mr. Bishop at least once or twice a week, wouldn't you?

A. Yes.

Q. By telephone? A. Yes. [474]

Q. And by personal visits?

A. Well, certainly. In the conduct of our business it was necessary.

Q. And you gave him gratuities, did you not?

A. I give him the Fruit of the Month Club, which cost about \$20.00 a year.

Q. What else did you give him?

A. Nothing else.

Q. Now, one thing more: You told us that your attorney and secretary prepared the bid that was submitted to the City Council?

A. That is correct.

Q. Did those same two people prepare those ads which say, "Do not be confused." 90 per cent of all name bands will appear at—

A. No. Understand, this bid was prepared from notes that I gave them.

(Testimony of Wayne Dailard)

Q. Oh, I see.

A. Frankly, I did not read it.

Q. I see.

A. When it was offered, I asked them to amplify it. That has been a policy. It is part of Pacific Square that 90 per cent. If you want all the evidence, we will try and get you three or four years' newspapers.

Q. I just asked you a simple question, Mr. Dailard. [475] A. All right.

Mr. Doherty: Let the record show that the witness is referring to Plaintiff's Exhibit 7 when he says, "This is the policy."

The Court: Yes; that is what he was referring to.

Mr. Christensen: That is correct, sir.

Q. You say that you have advertised continuously since 1941, at least in the San Diego newspapers, that Pacific Square is the home of M. C. A. bands?

A. I did not say that.

Q. Is that the motto? I may have misquoted that.

A. "90 per cent of name bands."

Q. You say you did advertise that?

A. I did not say that.

Q. What is the situation?

A. I said that we had advertised it. Since we do not use institutional advertising 52 weeks a year, those types of ads have appeared several times during the year, to impress upon the public the quality of the efforts; that

(Testimony of Wayne Dailard)

we were bringing our M. C. A. slogan into it, exactly the same as if you were selling Florsheim shoes you would put a sign out "Forsheim shoes".

Q. Now, you say that you did have such ads during the year 1941?

A. Yes; from the opening of our ballroom. [476]

Q. Do you have a copy of those?

A. Do I have a copy of them?

Q. Yes.

A. I stated a few moments ago, if it would be necessary as evidence, I think I can obtain them from the newspaper files.

Q. Will you do that for me? A. Yes.

Mr. Christensen: Thank you, that is all.

Mr. Doherty: That is all. Mr. Dailard, there is further examination I must make of you, but not at this time, so will you stay under subpoena of the court, please?

The Witness: I beg your pardon, sir?

Mr. Doherty: You will still be available?

The Witness: Yes.

The Court: It is so close to the hour of adjournment, I think that we will adjourn.

Ladies and gentlemen, we will take a recess until two o'clock. Remember the admonition and keep its terms inviolate, and be here at two.

(Whereupon, a recess was taken until 2:00 o'clock p. m. of the same day.) [477]

Los Angeles, California, Friday, February 1, 1946.
2:00 p. m.

The Court: All present. Proceed.

Mr. Doherty: Your Honor, could counsel and I approach the bench a moment?

The Court: Yes, sir.

(Discussion between court and counsel off the record.)

The Court: We will do it at the appropriate time. Proceed, gentlemen.

Mr. Christensen: I think we had concluded, had we not, with Mr. Dailard?

Mr. Doherty: Yes.

Mr. Christensen: I think this might be a good time, then, to read these two exhibits, your Honor, our Exhibit No. 9 and our Exhibit No. 10, if I may.

The Court: Very well.

Mr. Jaffe: Weekend of January 1, 1940—

Mr. Christensen: By the way, may the record show that Mr. Jaffe is now reading from Plaintiff's Exhibit 9, which has to do with the record of the bands playing at Mission Beach and Pacific Square.

Mr. Jaffe: January 1, 1940, Jan Garber, M. C. A. January 5, Jan Garber, M. C. A. On February 2nd, at Mission Beach, Horace Heidt, M. C. A. March 29, Paul Pound, Police Ball.

May 3, at Mission Beach, Benny Goodman, M. C. A. [478]

Weekend of May 10, at Mission Beach, Harry Owens, M. C. A.

Weekend of May 24, at Mission Beach, Jacques Renard, General Amusement Corporation.

(Plaintiff's Exhibit 9)

Weekend of June 7, at Mission Beach, Tony Pastor, General Amusement Corporation.

Weekend of June 21st, Garwood Van, M. C. A.

Weekend of June 28, Sonny Dunham, General Amusement Corporation.

July 4, 5 and 6, Muzzy Marcellino, M. C. A.

July the 12th, at Mission Beach, Johnny Richards and Andrews Sisters, General Amusement Corporation.

July 14th, at Mission Beach, Skinnay Ennis, M. C. A.

The weekend of July 19, John Scott Trotter, General Amusement Corporation, at Mission Beach.

The weekend of July 26, Don Ricardo and Dick Powell, General Amusement Corporation.

August the 2nd, at Mission Beach, Johnny Richards, General Amusement Corporation.

The weekend of August 9th, Wingy Manone, at Mission Beach, General Amusement Corporation.

August 16th, at Mission Beach, Jan Garber, M. C. A.

August 23rd, at Mission Beach, Eddie Duchin, M. C. A.

August 30th, at Mission Beach, Muzzy Marcellino, M. C. A.

September the 6th, at Mission Beach, Freddy Martin, M. C. A.

September the 13th, at Mission Beach, Henry King, M. C. A. [479]

September the 20th, at Mission Beach, Bob Crosby, M. C. A.

September the 27th, at Mission Beach, Orrin Tucker, M. C. A.

October the 4th, at Mission Beach, Horace Heidt, M. C. A.

October the 11th, Sterling Young, M. C. A.

(Plaintiff's Exhibit 9)

October the 18th, Jimmy Joy, M. C. A.

November 1st, Orrin Tucker, M. C. A.

November 8th, Horace Heidt, M. C. A.

December the 13th, Tommy Dorsey, M. C. A.

December the 28th, at Pacific Square, Jan Garber, M. C. A.; at Mission Beach, Derby Show.

December 31st, at Pacific Square, Bob Crosby, M. C. A.; and at the Mission Beach, Derby Show.

In 1941, weekend of January 1st, at Pacific Square, Bob Crosby, M. C. A.; at Mission Beach, Derby Show.

January 5th, at Pacific Square, Bob Crosby, M. C. A.; at Mission Beach, Jan Garber, M. C. A.

January 10, 11 and 12, at Pacific Square, Muzzy Marcellino, G. A. C.; at Mission Beach, Derby Show.

January 17, 18 and 19, at Pacific Square, Jimmie Grier, M. C. A.; at Mission Beach, Derby Show.

January 24th, at Pacific Square, Skinnay Ennis, M. C. A.; nothing at Mission Beach.

Weekend of January 26, at Pacific Square, Henry King, M. C. A.; nothing at Mission Beach. [480]

Weekend of January 31st, and February 1st, 2nd and 3rd, Russ Morgan, M. C. A.; nothing at Mission Beach.

February 8th and 9th, at Pacific Square, Bob Crosby, M. C. A.; nothing at Mission Beach.

February 14, at Pacific Square, Muzzy Marcellino, General Amusement Corporation; nothing at Mission Beach.

February 21, Billy McDonald, M. C. A., at Pacific Square; at Mission Beach, Duke Ellington, William Morris.

February 26, Kay Kyser, M. C. A., at Pacific Square; nothing at Mission Beach.

(Plaintiff's Exhibit 9)

February 28, Jimmie Grier, M. C. A.; nothing at Mission Beach.

March 7, Billy Mills, Pacific Square, M. C. A.; nothing at Mission Beach.

March the 14th, at Pacific Square, Skinnay Ennis, M. C. A.; nothing at Mission Beach.

March the 15th, at Mission Beach, Carl Hoff, M. C. A.; nothing at Pacific Square.

March the 21st, at Pacific Square, the Merry Macs and Boyd Kellar, a local band; nothing at Mission Beach.

March 28, Boyd Kellar, local band; nothing at Mission Beach.

April the 4th, at Pacific Square, Phil Harris, M. C. A.; nothing at Mission Beach.

April 11th, at Pacific Square, Ted Lewis, M. C. A.; nothing [481] at Mission Beach.

April the 18th, at Pacific Square, Boyd Kellar. That is a local band. Mission Beach, Jay Eslick, the Police Ball.

April 25th, at Pacific Square, Johnny Richards and Andrews Sisters, General Amusement Corporation; nothing at Mission Beach.

May 2nd, at Pacific Square, John Scott Trotter, General Amusement Corporation; at Mission Beach, Boyd Kellar, local band.

May 9th, at Pacific Square, Richard Himber, General Amusement Corporation; Mission Beach, Boyd Kellar, local band.

May 14, at Pacific Square, Kay Kyser, M. C. A.; nothing at Mission Beach.

May 17th, at Pacific Square, Phil Harris, M. C. A.; Boyd Kellar, local band, at Mission Beach.

(Plaintiff's Exhibit 9)

May 23rd, at Pacific Square, Jack Teagarden, M. C. A.; Boyd Kellar, local band, at Mission Beach.

May 30th, at Pacific Square, Glen Gray, M. C. A.; Boyd Kellar, local band, at Mission Beach.

June the 6th, Boyd Kellar, local band, at Pacific Square; nothing at Mission Beach.

June 13th, at Pacific Square, Skinnay Ennis, M. C. A.; Boyd Kellar, local band, at Mission Beach.

June 20th, at Pacific Square, Harry Owen, M. C. A.; Boyd [482] Kellar, local band, at Mission Beach.

June 27th, at Pacific Square, Boyd Kellar, local band; nothing at Mission Beach.

July 3rd, 4th and 5th, at Pacific Square, Jack Teagarden, M. C. A.; Boyd Kellar at Mission Beach.

July 11th, at Pacific Square, Larry Kent, M. C. A.; nothing at Mission Beach.

July 13th, at Pacific Square, Dick Jergens, M. C. A.; Boyd Kellar at Mission Beach.

July 18th, at Pacific Square, Abe Lyman, M. C. A.; Boyd Kellar at Mission Beach.

July 25th, at Pacific Square, Abe Lyman, M. C. A.; Boyd Kellar at Mission Beach.

Weekend of August 1st, at Pacific Square, Johnny Richards, G. A. C.; at Mission Beach, Boyd Kellar.

Weekend of August 8, at Pacific Square, Bob Crosby, M. C. A.; nothing at Mission Beach.

August the 15th, at Pacific Square, Hal Grayson, M. C. A.; Boyd Kellar at Mission Beach.

August 22nd, at Pacific Square, Ozzie Nelson, M. C. A.; Boyd Kellar at Mission Beach.

August 29th, at Pacific Square. Ray Noble, M. C. A.; at Mission Beach was Mark Roberts, a local band.

(Plaintiff's Exhibit 9)

September the 5th, at Pacific Square, Hal Grayson, M. C. A.; Mark Roberts at Mission Beach. [483]

September 12th, at Pacific Square, Charles Barnet, M. C. A.; Mark Roberts at Mission Beach.

September 19th, Ted TioRito, M. C. A.; Mark Roberts at Mission Beach.

September 26th, Dick Hargrave at Pacific Square. He is a local band. Nothing at *Pacific* Beach.

October 3rd, at Pacific Square, Ozzie Nelson, M. C. A.; nothing at Mission Beach.

October 11, at Pacific Square, Bob Crosby, M. C. A.; nothing at Mission Beach.

October 18, at Pacific Square, Harry Owens, M. C. A.; nothing at Mission Beach.

October 25, Alvino Rey, M. C. A.; nothing at Mission Beach.

November 1st, at Pacific Square, Gene Krupa, M. C. A.; Mark Roberts at Mission Beach.

November 7th, at Pacific Square, Paul Pendarvis, M. C. A.; nothing at Mission Beach.

November 14th, at Pacific Square, Ted FioRito, M. C. A.; nothing at Mission Beach.

November the 19th, at Pacific Square, George Hamilton, M. C. A.; nothing at Mission Beach.

November the 21st, Freddie Martin, M. C. A., at Pacific Square; nothing at Mission Beach.

November 28th, at Pacific Square, Phil Harris, M. C. A.; nothing at Mission Beach. [484]

November 30th, Ted FioRito, M. C. A., at Pacific Square; nothing at Mission Beach.

December 5th, Skinnay Ennis, M. C. A.; nothing at Mission Beach.

(Plaintiff's Exhibit 9)

December 12th and 13th, Ted Weems, M. C. A.; nothing at Mission Beach.

December 14th, Ted FioRito, M. C. A.; nothing at Mission Beach.

December 19th, Phil Harris, M. C. A.; nothing at Mission Beach.

December 26th, Jan Garber, M. C. A.; nothing at Mission Beach.

In 1942, the weekend of January 1st, Ted FioRito, M. C. A.; nothing at Mission Beach.

January 9th and 10th, Ted FioRito, M. C. A.; nothing at Mission Beach.

January 16, Johnny Richards, M. C. A.; nothing at Mission Beach.

January 23rd, Ted FioRito, M. C. A.; nothing at Mission Beach.

January 30th, Jan Garber, M. C. A.; nothing at Mission Beach.

February 6th, Freddie Slack, William Morris; nothing at Mission Beach.

February 13, Gus Arnheim, M. C. A.; nothing at Mission [485] Beach.

February 20th, Bob Crosby, M. C. A.; nothing at Mission Beach.

February 27th, Paul Pendarvis, M. C. A.; nothing at Mission Beach.

March 6, Bob Crosby, M. C. A.; nothing at Mission Beach.

March the 8th, Tommy Dorsey, M. C. A.; nothing at Mission Beach.

March 13th, Sterling Young, M. C. A.; nothing at Mission Beach.

(Plaintiff's Exhibit 9)

March 20th, Freddie Slack, William Morris; nothing at Mission Beach.

March 27th, Jack Teagarden, M. C. A.; nothing at Mission Beach.

April 3rd, Paul Whiteman, William Morris; nothing at Mission Beach.

April 10, Horace Heidt, M. C. A.; nothing at Mission Beach.

April 17th, Gus Arnheim, M. C. A.; nothing at Mission Beach.

April 24th, Bob Crosby, M. C. A.; nothing at Mission Beach.

May 1, Sammy Kaye, M. C. A.; nothing at Mission Beach.

May 3rd, Bobby Sherwood, M. C. A.; nothing at Mission Beach.

May 8, Ozzie Nelson, M. C. A.; nothing at Mission Beach. [486]

May 9 and 10, Sonny Dunham, General Amusement Corporation; nothing at Mission Beach.

May 15, Bob Crosby, M. C. A.; nothing at Mission Beach.

May 22, Ted FioRito, M. C. A.; nothing at Mission Beach.

May 29th, Phil Harris, M. C. A.; nothing at Mission Beach.

May 31, Jack Teagarden, M. C. A.; nothing at Mission Beach.

June 5, Jan Savitt, M. C. A.; nothing at Mission Beach.

June 12, Jack Teagarden, M. C. A.; Mark Roberts at Mission Beach.

(Plaintiff's Exhibit 9)

June 19, Bob Crosby, M. C. A.; Recorded Music at Mission Beach.

June 26, Jimmie Grier, M. C. A.; Mark Roberts at Mission Beach.

July 3, Harry James, M. C. A.; Recorded Music at Mission Beach.

July 5, Sterling Young, M. C. A.; nothing at Mission Beach.

July 10, Ray Noble, M. C. A.; Bob Wills, Mission Beach.

July 17, Rudolf Friml, M. C. A.; Recorded Music at Mission Beach.

July 22, Les Brown, M. C. A.; nothing at Mission Beach.

July 24, Harry James and Leighton Noble, M. C. A., one night; and at Mission Beach, Leighton Noble of M. C. A. was there.

July 30th, Matty Malneck, M. C. A.; nothing at Mission Beach. [487]

August 7th, Billy Mills, M. C. A.; Recorded Music at Mission Beach.

August 14th, Ina Ray Hutton, M. C. A.; Recorded Music at Mission Beach.

August 21, Benny Goodman, M. C. A.; Records at Mission Beach.

August 28, Abe Lyman, M. C. A.; Records at Mission Beach.

September 4th, Rudolf Friml, M. C. A.; nothing at Mission Beach.

September 11, Bob Crosby, M. C. A.; nothing at Mission Beach.

(Plaintiff's Exhibit 9)

September the 14th to 16th, Ina Rae Hutton, Frederick Brothers; nothing at Mission Beach.

September 18, Jimmy Grier, M. C. A.; nothing at Mission Beach.

September 25th, Ray McKinney, William—I guess that is William Morris; nothing at Mission Beach.

October the 2nd, Hal Grayson, M. C. A.; Eddie Lane, local, at Mission Beach.

October 9th, Ted FioRito, M. C. A.; Eddie Lane at Mission Beach.

October 16, Ina Ray Hutton, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

October 23rd, Bob Chester, M. C. A.; nothing at Mission Beach. [488]

October 30th, Tommy Dorsey, M. C. A.; nothing at Mission Beach.

November 6, Jan Garber, M. C. A.; nothing at Mission Beach.

November 13, George Olsen, M. C. A.; Foreman Phillips, at Mission Beach.

November 20th, Johnny Richards, M. C. A.; nothing at Mission Beach.

November 27th, Ada Leonard, Frederick Brothers; nothing at Mission Beach.

December 4, Horace Heidt, M. C. A.; nothing at Mission Beach.

December 11, Ted FioRito, M. C. A.; nothing at Mission Beach.

December 18, Freddie Slack, William Morris; nothing at Mission Beach.

December 24th, Joe Reichman, M. C. A.; nothing at Mission Beach.

(Plaintiff's Exhibit 9)

The year 1943: Weekend of January 1st, Gene Krupa, M. C. A.; nothing at Mission Beach.

January 8th, Alvino Rey and the King Sisters, M. C. A.; nothing at Mission Beach.

January 10th, Hal Grayson, M. C. A.; nothing at Mission Beach.

January 15, Freddie Slack, William Morris, nothing at [489] Mission Beach.

January 22nd, Leon Mojica, M. C. A.; nothing at Mission Beach.

January 29th, Bob Crosby, M. C. A.; nothing at Mission Beach.

February 5, Hal Grayson, M. C. A.; nothing at Mission Beach.

The Court: Pardon me a moment. How much of that is there?

The Witness: We are in the year of 1943, your Honor, and it goes up to 1945.

The Court: Well, proceed.

Mr. Jaffe: February 12th, Johnny Richard, M. C. A.

I believe we can save time, your Honor, if I read those that appeared directly at Pacific Square, and they have not appeared at Mission Beach until I so state.

February 19, Harry Owens, M. C. A.

February 26, Woody Herman, General Amusement Corporation.

March 5, Ted Lewis, M. C. A.

March 12, Horace Heidt, M. C. A.

March 19, Hal Grayson, M. C. A. March 26, Henry King, M. C. A.

April 2, Jan Garber, M. C. A. April 9, Tommy Dorsey, M. C. A.

(Plaintiff's Exhibit 9)

April 11, Alvino Rey, M. C. A. April 16, Horace Heidt, M. C. A.

April 23rd, Al Donahue, William Morris.

April 30th, Glen Henry, M. C. A.; and Merle Carlson at [490] Mission Beach.

May 2nd, Alvino Rey, M. C. A., and Merle Carlson at Mission Beach.

May 8, Glen Henry, M. C. A., and Merle Carlson at Mission Beach.

May 14, Woody Herman, General Amusement Corporation; Merle Carlson at Mission Beach.

May 21, Jan Garber, M. C. A.; Merle Carlson at Mission Beach.

May 28, Eddie Miller, M. C. A.; Merle Carlson at Mission Beach.

June 4, Freddie Slack, M. C. A.; Merle Carlson at Mission Beach.

June 11, Frankie Masters, M. C. A.; Merle Carlson at Mission Beach.

June 18, Alvino Rey, M. C. A.; Merle Carlson at Mission Beach.

June 25, Henry King, M. C. A.; Merle Carlson at Mission Beach.

July 2nd, Ted Lewis, M. C. A.; Merle Carlson at Mission Beach.

July 9, Vaughn Monroe, William Morris; Jack Teagarden, M. C. A.; at Mission Beach.

July 16, Louis Prima, M. C. A.; Merle Carlson at Mission Beach. [491]

July 23rd, Jan Garber, M. C. A.; Merle Carlson at Mission Beach.

(Plaintiff's Exhibit 9)

July 30, Jan Garber, M. C. A.; Merle Carlson at Mission Beach.

August 5, Ted Lewis, M. C. A.; Merle Carlson at Mission Beach.

August 13, Henry King, M. C. A.; no one at Mission Beach.

August 20, Henry King, M. C. A.; Merle Carlson at Mission Beach.

August 27, Tommy Dorsey, M. C. A.; Merle Carlson at Mission Beach.

September 3rd, Charlie Spivak, M. C. A.; Merle Carlson at Mission Beach.

September 10, Louis Prima, M. C. A.; Merle Carlson at Mission Beach.

September 17th, Louis Prima, M. C. A.; Merle Carlson at Mission Beach.

September 24, Freddie Slack, M. C. A.; Merle Carlson at Mission Beach.

October 1, Paul Martin, M. C. A.; Merle Carlson at Mission Beach.

October 8, Jimmy Dorsey, General Amusement Corporation; Merle Carlson at Mission Beach.

October 15, Les Brown, M. C. A.; Merle Carlson at Mission Beach. [492]

October 22, Mitch Ayers and Andrews Sisters, General Amusement Corporation; Merle Carlson at Mission Beach.

October 29, Charlie Spivak, M. C. A., and Spade Cooley, General Amusement Corporation at Mission Beach.

November 5, Bob Crosby, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

November 12, Joe Reichman, M. C. A.; Merle Carlson, at Mission Beach.

(Plaintiff's Exhibit 9)

November 19, Frankie Masters, M. C. A.; Jack Teagarden, M. C. A., at Mission Beach.

November 26, Teddy Powell, M. C. A.; Merle Carlson at Mission Beach.

December 3, Les Brown, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

December 16, Horace Heidt, M. C. A.; Merle Carlson at Mission Beach.

December 17, Les Brown, M. C. A.; Merle Carlson at Mission Beach.

December 24, Paul Martin, M. C. A.; no one indicated at Mission Beach.

December 31, Bob Crosby, M. C. A.; Merle Carlson at Mission Beach.

The year of 1944: January 1, Bob Crosby, M. C. A.; Merle Carlson at Mission Beach.

January 7, Henry Busse, William Morris; Merle Carlson at [493] Mission Beach.

January 14th, Frankie Masters, M. C. A.; Merle Carlson at Mission Beach.

January 21, Alvino Rey, M. C. A.; Merle Carlson at Mission Beach.

January 28, Sammy Kaye, M. C. A.; Bob Nolan at Mission Beach.

February 4, Sammy Kaye, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

February 11, Stan Kenton, General Amusement Corporation; Merle Carlson at Mission Beach.

February 18, Woody Herman, General Amusement Corporation; Spade Cooley, General Amusement Corporation, at Mission Beach.

(Plaintiff's Exhibit 9)

February 25, Paul Martin, M. C. A.; Merle Carlson at Mission Beach.

March 3, Jack Teagarden, M. C. A.; Merle Carlson at Mission Beach.

March 10, Kenny Baker, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

March 17, Hal McIntyre, William Morris; Spade Cooley, General Amusement Corporation, at Mission Beach.

March 24, Sammy Kaye, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

March 31, Stan Kenton, General Amusement Corporation; [494] Spade Cooley, General Amusement Corporation, at Mission Beach.

April 7, Jack Teagarden, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

April 14, Jimmy Dorsey, General Amusement Corporation; Spade Cooley, General Amusement Corporation, at Mission Beach.

April 21, Johnny Richards, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

April 28, Ina Rae Hutton, Frederick Brothers; Spade Cooley, General Amusement Corporation, at Mission Beach.

May 5, Charlie Barnet, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

May 12, Charlie Barnet, M. C. A.; Bob Wills, M. C. A., Mission Beach.

May 19, Hal McIntyre, William Morris; Spade Cooley, General Amusement Corporation, at Mission Beach.

May 26, Al Donahue, William Morris; Spade Cooley, General Amusement Corporation, at Mission Beach.

(Plaintiff's Exhibit 9)

June 2nd, Henry King, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

June 9, Horace Heidt, M. C. A.; Spade Cooley, General Amusement Corporation, at Mission Beach.

June 16, Jan Garber, M. C. A.; Ray Whitley at Mission Beach.

June 23rd, Jan Garber, M. C. A.; Bob Wills, M. C. A., at [495] Mission Beach.

June 30, Charlie Barnet, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

July 7, Charlie Barnet, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

July 14, Ted Weems, M. C. A.; Ray Whitley, at Mission Beach.

July 17th, Ted Weems, M. C. A.; no one indicated for Mission Beach.

July 21, Ted Weems, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

July 28, Jack Teagarden, M. C. A.; Ray Whitley at Mission Beach.

August 4, Charlie Barnet, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

August 11, Joe Reichman, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

August 18, Jimmy Dorsey, General Amusement Corporation; Bob Wills, M. C. A. at Mission Beach.

August 25, Jimmy Dorsey, General Amusement Corporation; Bob Willis, M. C. A., at Mission Beach.

September 1, Jan Garber, M. C. A.; no one indicated at Mission Beach.

September 8, Ted Lewis, M. C. A.

(Plaintiff's Exhibit 9)

September 15, Joe Reichman, M. C. A.; Freddie Martin, [496] M. C. A., at Mission Beach.

September 22, Jan Garber, M. C. A.

September 29, Harry James, M. C. A.

October 6, Harry James, M. C. A.

October 13, Al Donahue, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

October 20, Frankie Masters, M. C. A.; Spike Jones, General Amusement Corporation, at Mission Beach.

October 27, Freddy Martin, M. C. A.

November 3, Tommy Dorsey, M. C. A.; Bob Wills, M. C. A., at Mission Beach.

November 8, Leighton Noble, M. C. A.; and no one indicated at Mission Beach.

November 10, Tommy Dorsey, M. C. A.; and Bob Wills, M. C. A., at Mission Beach.

November 17, Freddy Martin, M. C. A.; Spike Jones, General Amusement Corporation, at Mission Beach.

November 24, Artie Shaw, William Morris; and Stan Kenton, General Amusement Corporation, at Mission Beach.

December 1, Bobby Sherwood, M. C. A.

December 8, Woody Herman, General Amusement Corporation.

December 15, Harry James, M. C. A.

December 22nd, Jan Garber, M. C. A.

December 29, Charlie Barnet, M. C. A.; Harry Owens, M. C. A., at Mission Beach. [497]

1945, Finley starts.

January 1, Charlie Barnet, M. C. A. Nothing at Mission Beach.

(Plaintiff's Exhibit 9)

January 5, Stan Kenton, G. A. C. Nothing at Mission Beach.

January 12th, Jan Garber, M. C. A.; nothing at Mission Beach.

January 19th, Charlie Barnet, M. C. A.; nothing at Mission Beach.

January 26, Ted FioRito, M. C. A.; nothing at Mission Beach.

January 30, Bob Wills, M. C. A.; nothing at Mission Beach.

February 2, Vaughn Monroe, William Morris, and King Sisters, M. C. A., at Pacific Square; and Henry Busse, William Morris, at Mission Beach.

February 9th, at Pacific Square, Bob Chester and Jack Teagarden, M. C. A. Tiny Hill, Frederick Brothers, at Mission Beach.

February 6, at Pacific Square, Bob Wills, M. C. A.; and February 13, Bob Wills, M. C. A. Nothing indicated for Mission Beach.

February 16, Ted Lewis, M. C. A.; Wingy Manone, General Amusement Corporation, at Mission Beach.

February 20, Bob Wills, M. C. A.; nothing indicated at [498] Mission Beach.

February 23, Bob Wills, M. C. A., at Pacific Square; Sally Mason, Frederick Brothers, at Mission Beach.

February 27th, at Pacific Square, Bob Wills, M. C. A.; nothing at Mission Beach.

March 2, at Pacific Square, Gene Krupa, M. C. A.; Ansil Hill, General Amusement Corporation, at Mission Beach.

(Plaintiff's Exhibit 9)

March 6, Merle Lindsey, and nothing indicated of the agency, at Pacific Square; and no one indicated at Mission Beach.

March 9th, Eddie Oliver, Abbott & Costello, M. C. A.; and Ada Leonard, Frederick Brothers, at Mission Beach.

March 13, at Pacific Square, Bob Wills, M. C. A.; and nothing indicated for Mission Beach.

March 16, Jack Teagarden, M. C. A.; Ansil Hill, General Amusement Corporation, at Mission Beach.

March 20, Bob Wills, M. C. A.; nothing indicated for Mission Beach.

March 23rd, Artie Shaw, William Morris; and Shorty Sherock, General Amusement Corporation, at Mission Beach.

March 27, Bob Wills, M. C. A., and nothing indicated for Mission Beach.

March 30, Bob Wills—or, Artie Shaw, William Morris; and Shorty Sherock, General Amusement Corporation, at Mission Beach. [499]

On April 3rd, Bob Wills, M. C. A.; nothing indicated for Mission Beach.

April 6th, Artie Shaw, William Morris; and Ansil Hill, General Amusement Corporation, at Mission Beach.

April 13, Ted FioRito, Music Corporation of America; and Muzzy Marcellino, General Amusement Corporation, at Mission Beach.

April 17th, Bob Wills, M. C. A.; nothing indicated for Mission Beach.

April 20th, Charlie Barnet, M. C. A.; and Chris Cross, Frederick Brothers, at Mission Beach.

April 24th, at Pacific Square, Bob Wills, M. C. A.; nothing indicated for Mission Beach.

(Plaintiff's Exhibit 9)

April 27th, Charlie Barnet, M. C. A.; Ansil Hill, General Amusement Corporation, at Mission Beach.

May 1, Bob Wills, M. C. A.; nothing indicated for Mission Beach.

May 4, Al Donahue, M. C. A.; Ansil Hill, General Amusement Corporation, at Mission Beach.

May 11, Jan Garber, M. C. A.; Frankie Carle, General Amusement Corporation, at Mission Beach.

May 15, at Pacific Square, Merle Lindsey. Nothing indicated at Mission Beach.

May 18, Jan Garber, M. C. A.; Frankie Carle, General Amusement Corporation, at Mission Beach. [500]

May 22nd, Eddie Martin. The agency is not indicated, and nothing is indicated for Mission Beach at that time.

May 26, at Pacific Square, Will Osborne, M. C. A.; Frankie Carle, General Amusement Corporation, at Mission Beach.

May 29, Texas Jimmie Lewis is written out here. That was at Pacific Square, and nothing is indicated for Mission Beach.

June 1, 1945, Artie Shaw, William Morris; and Frankie Carle at Mission Beach. Frankie Carle is General Amusement Corporation.

June 6, Tommy Tucker, M. C. A.; Frankie Carle, General Amusement Corporation, at Mission Beach.

June 13, Jack Teagarden, M. C. A.; and at Mission Beach was Tony Pastor of the General Amusement Corporation.

June 18, Jack Teagarden at Pacific Square, M. C. A.; nothing indicated for Mission Beach.

June 22, Charlie Barnet, M. C. A.; Tony Pastor, General Amusement Corporation, at Mission Beach.

(Plaintiff's Exhibit 9)

June 29, at Pacific Square, Artie Shaw, William Morris; and Jimmy Dorsey, General Amusement Corporation, at Mission Beach.

July 3, Jan Garber, M. C. A.; at Mission Beach was Jimmy Dorsey, General Amusement Corporation.

July 3, at Pacific Square is Ted Dophin - Foreman Phillips; nothing indicated for Mission Beach. [501]

There is other handwriting that I can't make out at the moment. Happy Pereyman is listed here in pencil for June 19th at Pacific Square, and June 26, Hank Penny - Foreman Phillips at Pacific Square, with nothing indicated at Mission Beach opposite it.

The Court: How much more of that is there, Mr. Jaffe?

Mr. Jaffe: This is the last page, your Honor.

The Court: Very well.

Mr. Jaffe: July 13, at Pacific Square, Jan Savitt, M. C. A.; at Mission Beach, Jimmy Dorsey, General Amusement Corporation.

July 20, Les Brown, M. C. A., at Pacific Square; Tommy Dorsey, M. C. A., at Mission Beach.

July 27, Tommy Tucker, M. C. A.; Tommy Dorsey, M. C. A., at Mission Beach.

August 3, Charlie Barnet, M. C. A.; was at Pacific Square; and Eddie Miller, M. C. A., at Mission Beach.

August 10, Ray Herbeck, M. C. A., was at Pacific Square; and Glen Gray, of General Amusement Corporation, at Mission Beach.

August 17th, George Auld, Frederick Brothers, was at Pacific Square; Glen Gray, General Amusement Corporation, was at Mission Beach.

(Plaintiff's Exhibit 9)

August 24, Gary Nottingham, M. C. A., was at Pacific Square; Glen Gray, General Amusement Corporation, was at [502] Mission Beach.

August 31, Skinnay Ennis, M. C. A., was at Pacific Square, and Glen Gray, General Amusement Corporation, was at Mission Beach.

September 7, Artie Shaw, M. C. A., was at Pacific Square; and Pinky Tomlin, Frederick Brothers, was at Mission Beach.

September 14, Jan Savitt, M. C. A., was at Pacific Square; and Pinky Tomlin, Frederick Brothers, was at Mission Beach.

September 21, Bobby Sherwood, M. C. A., was at Pacific Square, and Boyd Raeburn, William Morris, was at Mission Beach.

September 28, Skinnay Ennis, M. C. A., was at Pacific Square, and Boyd Raeburn, William Morris, was at Mission Beach.

October 2, Bob Wills, of M. C. A., was at Pacific Square. Nothing is indicated for Mission Beach.

October 5, Harry James, M. C. A., at Pacific Square, and David Willis was at Mission Beach.

October 12, Xavier Cugat was at Pacific Square, and David Willis was at Mission Beach.

October 19, Xavier Cugat was at Pacific Square, and David Willis was at Mission Beach.

October 26, Bobby Sherwood, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

November 2, Joe Reichman, M. C. A., was at Pacific Square, and David Willis was at Mission Beach. [503]

November 9, Harry James, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

(Plaintiff's Exhibit 9)

November 16, Bob Crosby, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

November 23, Joy Cayler, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

November 30, Jan Garber, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

December 7, Skinnay Ennis, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

December 10, Bob Wills, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

December 14th, Joe Reichman, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

December 21, Carmen Cavallero, M. C. A., was at Pacific Square, and David Willis was at Mission Beach.

December 28, Bob Crosby, M. C. A., was at Pacific Square; Charlie Barnet, M. C. A., was at Mission Beach. [504]

The Court: This other agreement that you suggested be read now, if it is a little long, I think we had better have a witness on the stand.

Mr. Christensen: Let me call Mr. Jules Stein for cross-examination.

Mr. Doherty, may we have it understood that when we use the initials or when the initials "M. C. A." have been used they refer to Music Corporation of America?

Mr. Doherty: Yes. I think everybody understands that. So stipulated.

The Court: It is so understood.

JULES STEIN,

called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

Examination

By Mr. Christensen:

The Clerk: State your name.

The Witness: Jules Stein.

Q. By Mr. Christensen: Mr. Stein, your business, occupation or profession, sir, is what?

A. President of Music Corporation of America.

Q. And the business of Music Corporation of America is what?

A. Representing orchestras.

Q. You also are connected with other forms of the enter- [505] tainment business, are you not, sir?

A. Yes.

Q. Will you tell us what they are?

A. President of several other companies that represent talent in various branches of the amusement business.

Q. Well, for example, you are also the president of M. C. A. Artists, Ltd., are you not, sir? A. Yes.

Q. What is the business of M. C. A. Artists, Ltd.?

A. Representing artists in the amusement business.

Q. What are the other ones, sir?

A. There is Management Corporation of America.

Q. And the business or occupation of Management Corporation of America is what?

A. A New York corporation, primarily representing radio artists.

Q. You are the president of that organization, too, are you not, sir? A. Yes.

Q. And you are also the president of California Movie Company, Inc., are you not, sir? A. Yes.

(Testimony of Jules Stein)

Q. What is the business of that organization, sir?

A. That also represents a few radio artists.

Q. All in all, there are four other affiliates of Music [506] Corporation of America, are there not, sir?

A. Approximately.

Q. Well, what is the exact number, sir?

A. Well, I don't know offhand but it would be four or five, perhaps.

Q. And you are the president of all of those?

A. I believe all except one or two.

Q. What are those?

A. There may be some small corporation that is primarily interested in some real estate, which I may not be. I am not sure at the present moment.

Q. The directors of all of those organizations are the same, are they not, sir?

A. Primarily the same.

Q. And the business of Music Corporation of America is divided, is it not, into a number of different offices?

A. Music Corporation of America has offices in various cities.

Q. Will you tell us which cities?

A. They have offices in New York, Chicago, Beverly Hills, Cleveland, Detroit, Dallas, and San Francisco.

Q. That is to say, there are seven offices of Music Corporation of America at this time? A. Right.

Q. Prior to the war, there were offices in foreign [507] countries, too, sir?

A. We had an office in London, England, only. However, that was not Music Corporation of America.

Q. And you have other offices in the United States?

A. We had an office in Atlanta which we closed.

(Testimony of Jules Stein)

Q. And the Music Corporation of America is a corporation, is it not? A. It is.

Q. Organized under the laws of Delaware?

A. It is.

Q. Does it have a principal place of business?

A. It has no principal place of business.

Q. Then, the business is conducted through and by means of the seven offices that you have named?

A. Right.

Q. Does any one of those offices cover the entire United States, or do each of the offices have separate territory of its own?

A. They have a jurisdiction. Some of them are interlocked.

Q. Can you explain?

A. The United States is divided into several sections or jurisdictions, and the dividing lines are not particularly sharp, as, for example, we might find our office in Cleveland handling certain accounts in Pittsburgh simultaneously with [508] our New York office; and similar examples would appear wherever the jurisdictions meet.

Q. The business of Music Corporation of America is in the representation of orchestras and musicians in all branches of the amusement industry? is it not?

The Witness: Will you repeat, that, please?

(Question read by the reporter.)

A. Not exactly.

Q. Do you wish to explain?

A. We are representatives, counsellors, advisers, and agents to orchestras, primarily the leaders. Our contact with the individual musicians is practically nil.

(Testimony of Jules Stein)

Q. But you do represent the musicians and the orchestras as a whole, do you not, sir?

A. Well, it is a question as to who is the employer, the leader or the place of performance.

Q. You receive commission on the amount of money paid to and for the use of the entire orchestra, do you not, sir?

A. Right.

Q. And you are required to show the name of the musicians which are appearing on your contract?

A. Right.

Q. A moment ago you told us about the various offices. Can you tell me—I think you used the word “jurisdiction”, so let me use that. Can you tell me the jurisdiction of the [509] Beverly Hills office?

A. Well, it essentially goes as far East as the Rockies, down through, perhaps, El Paso, covering the Coast states to the north, and everything west of that line.

Q. This office, then, handles the booking with the ballroom operators throughout the area you have just described, does it not, sir?

A. Either this office or the San Francisco office.

Q. Does the San Francisco office have concurrent jurisdiction with this office? When I say “this office” I am referring to the Beverly Hills office.

A. It is in reality a branch of the Beverly Hills office.

Q. Will you take, for example, an orchestra which you represent, being in Chicago and desirous of playing throughout the West and Middlewest and Northern states, and tell us how that is handled?

A. Well, if an orchestra desires to come west and play engagements in this community, if, through our best knowledge and advice it is advisable that they come into

(Testimony of Jules Stein)

this territory, contact is made with the leader of the orchestra involved.

Q. Tell me how you would do that, sir?

A. That would either be by personal contact, telephone, wire or correspondence, or perhaps by contact with some other office who might contact the leader in that way. [510]

Q. Then, for example, if the orchestra was in Chicago, then you would phone, or telephone, probably, would you not, your Chicago office and ask the personnel there or one of the members of that office to contact the leader of the orchestra at Chicago and get certain information?

A. It is usually done in consultation with the other office wherever the orchestra might be.

Q. In other words, the business of the Music Corporation of America is so set up that it covers the entire United States? A. Yes.

Q. And it would depend upon the jurisdiction of the particular office as to which office would handle the business? A. Right.

Q. Now, if a band were in New York City and it was coming clear to the West Coast, how many of your offices would handle that?

A. Well, sometimes it is handled directly with the orchestra leader. If it were for an engagement in this territory, it might be handled directly from here to the leader.

Q. In other words, from Beverly Hills you would contact the leader, then, in New York, and make the

(Testimony of Jules Stein)

arrangements by way of—oh, letter or telephone or wire, for the trip west? [511]

A. Usually with the knowledge of the other offices or the primary office which may be involved at that time in also wanting the attraction of the orchestra for its place.

Q. Now, tell me how do you do that? How is that done, sir?

A. Your question has to be more specific on just what you—

Q. Well, you said you advised the other offices.

A. They will either know by previous phone calls or correspondence that an orchestra is wanted or desired in this community; and then they will consult with the orchestra leader, advising him of the various engagements that might be available for him throughout the United States. He will then be given our advice and counsel and he will then make a decision on what he would like to do best and which, perhaps, is the most remunerative or beneficial to his career.

Q. Which office would handle the contracts for that trip, or would it be handled by several offices?

A. Well, it would depend upon where the engagement is to be performed. If it were to be performed in this jurisdiction, undoubtedly and unquestionably this office here in Beverly Hills would handle it.

Q. Then, let me see; Denver would be in the jurisdiction of the Beverly Hills office?

A. It might be in the Chicago jurisdiction. [512]

(Testimony of Jules Stein)

Q. Denver would be Chicago?

A. There is a dividing line. ' That is one of the towns, I think, that is handled by both offices.

Q. So that either Chicago or Beverly Hills offices would handle Denver, is that right?

A. That is right.

Q. Then, let us come a little farther west and take Salt Lake City. The Los Angeles office would prepare the contracts with that ballroom operator in Salt Lake, sir?

A. Either the Beverly Hills office or the San Francisco office.

Q. And they would mail the contract to the ballroom operator there in Salt Lake City for execution?

A. Right.

Q. And the ballroom operator in Salt Lake would return it then to your Beverly Hills office?

A. Right.

Q. And then you would forward it to the band leader?

A. Well, just which comes first I am not certain, but I am of the opinion that the negotiations are made with the employer, after discussion with the orchestra leader, and contracts are then mailed, they are returned to this office and then sent to the leader of the orchestra to sign, returned to this office, and then returned to the employer with the copy for filing with the local Federation of Musicians' office [513] in the city where the engagement is performed.

(Testimony of Jules Stein)

Q. And the remittances, are they handled by telegraph or mail?

A. That depends on the type of engagement upon which the orchestra performs.

Q. Well, explain to us.

A. If it is a single engagement, as we call "one-nighters" in the parlance of our business, as a rule, a deposit is required of the promoter or the employer who desires to put on the dance. Deposits are eliminated from certain types of employers with whom we have done business for a long time, because the American Federation of Musicians holds us responsible for failure of the leader to be compensated for his services, as well as those of the orchestra.

Q. The American Federation of Musicians—

A. The American Federation of Musicians holds the agent responsible.

Q. In other words, in this case it would be the Music Corporation of America or you, personally?

A. Everything due to care and diligence must be carried out in the securing of engagements. With regard to permanent engagements, that is, an engagement of an orchestra for one week or longer, as a rule, deposits are not required, because they are usually employers who have been in that business for [514] a substantial period of time. However, in many cases, as, for instance, engagements in Florida, which are seasonal engagements or engagements of a seasonal type, very often have their engagements for a week or longer and substantial deposits are required.

(Testimony of Jules Stein)

Q. Those are sent by wire, are they not? Time is very important?

A. They are usually sent by mail, because time is an essence in doing proper bookings. However, our contracts, it is their desire to be booked consecutively, constantly, and with due credit to themselves.

Q. From what you have told me, it appears that your offices act in cooperation with each other; that is to say, the Beverly Hills office in cooperation with all of the other six and the other six vice versa, is that right?

A. They cooperate to the best of their ability.

Q. And you keep your offices apprised, one as to what the others are doing, is that right?

A. As best as possible.

Q. Is the credit for the bookings given to one office or is it to the corporation in general?

A. It is given to the corporation in general.

Q. Well, where is that office, that is, the office of the corporation in the sense that you have now just used it?

A. Our accounting, if you refer to that, is done in our [515] New York offices.

Q. So then, if your Beverly Hills office received remittances, those funds are transferred to your New York office?

A. No; they are kept here. Accounting returns or accounting reports are sent for consolidation to our New York offices. It is really not our own New York office; it is sent to an accounting firm in New York.

Q. In order to handle these series of one-nighters someone prepares an itinerary; that is true, is it?

A. Right.

(Testimony of Jules Stein)

Q. Will you tell me who does that?

A. That is usually prepared in the office where the orchestra is or in whose jurisdiction the orchestra is appearing.

Q. Well, it is prepared by the M.C.A.?

A. It is prepared by an employee of our company; yes.

Q. Mr. Stein, when I use the word "band" and the word "orchestra" I am using them synonymously. Are they, so far as you know, synonymous? I want to be correct.

A. Well, truthfully, the nomenclature is entirely different. A band is an instrumental group of brass instruments. An orchestra is primarily one of a combination of instruments, including string as well as reed and brass instruments and percussion. [516]

The word "band" has been introduced in reference to such orchestras as we have known as the jazz bands, and the words became rather synonymous over the last period of—oh, ten years, perhaps, maybe longer. There have been numerous controversies on it because of different laws under the American Federation of Musicians applying to bands and different ones applying to orchestras; and therefore confusion has arisen, when they look at various interpretations of the laws, which is bands and which is orchestras, when in reality they are orchestras.

Q. If I use the term "orchestra" will you understand that I am not attempting to differentiate, but include both? A. Right.

(Testimony of Jules Stein)

Q. Thank you, sir. So that the itinerary for the orchestra, then, is prepared by the office that originates the booking, is that right? A. Correct.

Q. For instance, if your Beverly Hills office is bringing somebody from New York, wouldn't your Beverly Hills office prepare the itinerary?

A. Only for their jurisdiction.

Q. Just from when it gets into that portion of the country west of the Rockies; is that true? A. Right.

Q. And that, I believe you have told me, is done by [517] mail, telegram, telephone, and in some cases by personal contact? A. It could be.

Q. Your representatives do call upon the ballroom operators, do they not, sir? A. Yes, they do.

Q. And do keep in touch with the orchestra while it is en route, shall I say, en route filling its engagements?

A. I think so.

Q. And counsel and advise with them under such circumstances? A. Correct.

Q. And keep track of what they are doing, how they are doing in the particular engagements?

A. Correct.

Q. The Music Corporation of America represents a large number of bands, does it not, sir?

A. A substantial number of bands.

Q. Do you know the number, sir?

A. Only approximate, perhaps.

Q. Would you tell me?

A. I would say in the neighborhood of 200.

Q. Oh, yes. If the Beverly Hills office were to make an engagement for a particular orchestra to play at a particular ballroom on a particular date, your Beverly

(Testimony of Jules Stein)

Hills office [518] would then at that time promptly, at least, notify all other offices of that fact?

A. Not necessarily so.

Q. Would you explain?

A. If an orchestra is allocated to this district or has agreed to stay in this jurisdiction for a reasonable length of time, unless there are demands from other offices for the orchestra, it would be unnecessary to keep the other offices completely advised of each and every detail of their engagement.

However, I believe they have sufficient knowledge of other engagements in the territory so as to be helpful to them in any negotiations they may have with people in their jurisdiction.

Q. Could you help us by telling us how and in what manner that these allocations that you just spoke of are made?

A. Purely at the desire of the orchestra leader. We counsel and advise him and recommend various types of engagements throughout the country. He has the privilege of deciding on what he would like to have done and where he would like to perform, providing we can secure those engagements for him; and then we, to the best of our ability, carry out his desires.

Q. Well, isn't it true, though, that you counsel with [519] the various orchestras and advise as to where, in your judgment—when I say “yours”, whoever you may have delegated the duty to—in your judgment the orchestras should play?

A. That is what they engage us for, for our counsel and advice.

(Testimony of Jules Stein)

Q. Yes, sir. And generally speaking, that is followed, is it not, sir? A. No; not necessarily so.

Q. But even if an orchestra were to accept a direct booking, they would nevertheless be required to pay you the regular commission on that engagement; is that not true? A. That is true.

Q. The dollar volume of business done by Music Corporation of America is approximately \$15,000,000 per year, is that right? A. Correct.

Q. Now, with reference to this direct booking: Sammy Kaye is one of the orchestras represented by you?

A. Yes.

Q. He is now in New York? A. Right.

Q. Suppose a ballroom operator here desired to make a direct booking with Sammy Kaye; how would that be handled?

A. Well, if the employer wished to contact the orchestra leader direct, it is perfectly agreeable. [520]

Q. Would you require that your company prepare the contracts?

A. That is the usual custom in the business and is required by the American Federation of Musicians.

Q. You do insist upon that, don't you?

A. Only by our obligations to the orchestra and to the American Federation of Musicians.

Q. I mean, but you do insist upon that, don't you?

Mr. Doherty: I think the question has been asked and answered, your Honor. He said he must, because of the regulations of the American Federation of Musicians.

The Court: Wasn't that the same question repeated? I thought he had answered.

(Testimony of Jules Stein)

Mr. Christensen: He just said he must. I wondered if he did, even though he must.

A. Well, it is a custom and a requirement. We have no alternative.

Q. You know Mr. Finley, don't you, sir?

A. I have met him.

Q. That is all; just have met him?

A. That is about all.

Q. At least some of these affiliate organizations represent attractions as we have here distinguished them from orchestras; that is right, isn't it?

A. Well, everything in the amusement business, as we [521] sell it, is an attraction. Attractions are divided into their various categories: Artists, orchestras, motion pictures, and other types of amusement. Everything is an attraction.

Q. All right. Then, using that definition, one of the affiliate organizations represents artists?

A. Correct.

Q. I believe you told me that there is one of the affiliates that represents only motion picture artists, isn't it?

A. Primarily motion pictures.

Q. And that there is one of your affiliates represents, primarily at least, radio artists, is that correct?

A. Right.

Q. And then there is one of your affiliates that represents artists, generally, is that true?

A. Well, there is no sharp demarcation. It is more by the rules of the various unions and guilds that require licensing in order to represent their artists or their members.

(Testimony of Jules Stein)

Q. Now, when a booking is available, say, for an orchestra, then you also try to book into that spot an artist that you represent, too, don't you?

A. Occasionally.

Q. Well, as often as you can, don't you?

A. Yes, if they are desired by the places of perform- [522] ance.

Q. You have seen that letter there or that contract with Mr. Dailard, haven't you? A. Yes.

Q. It is in evidence there. That signature which appears to be "Jules Stein" with the title "Pres." of president? A. Right.

Q. That is your signature, isn't it? A. It is.

Mr. Christensen: That is all I wanted. Thank you very much, Mr. Stein. You may examine, counsel.

Mr. Doherty: My rule, your Honor, when I have my own client, I cross-examine not at all, because I think it is better to put him on in due order. But I think, for the purpose of the jury, there ought to be just one or two questions asked.

Cross-Examination

By Mr. Doherty:

Q. Mr. Stein, in answer to one question, you said it depends upon whether or not the leader is the employer or the musicians. Now, there is some conflict, is there not, between the construction given that position by the American Federation of Musicians and the Internal Revenue Department?

A. That is correct. There is a controversy which has [523] existed for some ten years with the—

(Testimony of Jules Stein)

Q. The Musicians—pardon me. Go ahead.

A. —with the advent of Social Security, as to who is the employer. The American Federation of Musicians has endeavored by what they call a form B contract to maintain that the position of the performances, as, for example, Mr. Dailard or Mr. Finley is the employer, and many of the employers, and the Government has held, up to date, that in reality the leader of the orchestra is the employer. There has been a large confusion that has not been decided to date. I think it is now up in the Circuit Federal Court of St. Louis to be decided, or at least another decision to be rendered within the next few weeks.

Q. In other words, the Musicians' Union want, like the Biltmore Hotel, to be deemed the employer?

A. Right.

Q. Of the entire band? A. Right.

Q. And the Internal Revenue Department wants the band leader to be known as the employer of his musicians, and the hotel or place of amusement a sort of independent contractor with the band leader?

A. Well, no. Originally, the Treasury Department wanted the leader to be the employer. Then they reversed themselves, after consultation with the American Federation of [521] Musicians. But the courts to date have held that the leader is still the employer. So there is a conflict between the Treasury Department and the courts which has not yet been carried sufficiently high to make the final determination.

Q. Now, you state there are approximately 200 bands represented by the Music Corporation of America. How many bands are there in the United States?

A. I would say approximately a thousand.

(Testimony of Jules Stein)

Q. That is what you would call so-called name bands?

A. Yes, name bands in my interpretation.

Q. What is your interpretation of the name band, Mr. Stein?

Mr. Christensen: To which we object as not being proper examination.

The Court: Well, I think it is. I think it is. You asked him how many bands they controlled.

Mr. Christensen: Yes, I did.

The Court: And they have a right to expatiate on that on cross examination. Do you press the question, Major?

Mr. Doherty: Yes. I was just going to make a suggestion. Your Honor used the words "that they controlled". They merely act as employment agents for.

The Court: I was not using the word advisedly. Do you want him to answer that question?

Mr. Doherty: Yes. [525]

The Court: The objection is overruled.

Q. By Mr. Doherty: Mr. Stein, we have had numerous witnesses here, now, tell us what is and what is not a name band. Will you now try to give your interpretation or construction or definition of it?

A. My simplest interpretation of a name band is any number of musicians to which a name is ascribed; and then it is a question of relative value of those name bands from the simplest one to the largest attraction of its kind in the business.

Q. And what name is ascribed to it?

A. The name of the leader itself in practically all cases.

(Testimony of Jules Stein)

Q. Are there any exceptions to that?

A. There are a few exceptions where names are used in conjunction with descriptive places or descriptive terms, as, for instance, the Casa Loma Orchestra is one to which another name was added, the name of the leader, Glen Gray. In my opinion, there is no demarcation or beginning or end of what is a name band.

Q. And there is no certain definition; and it is your opinion that the name of the leader is what determines whether it is or is not a name band? A. Correct.

Q. How long have you had to observe the development of [526] that in the United States; over what period of time? A. Since 1915.

Q. How did that start out? Were those the days before radio?

A. Radio was not in existence at that time and name bands, or what we would refer to as a name band, would be any aggregation of musicians that possibly traveled from one community to another or developed any following whatsoever in its own community.

I, myself, considered myself a name orchestra when I had 7 musicians and went from Chicago to Kansas City in 1916; and I was advertised as such in Kansas City. There was no radio. I had made no records. But, to the people in Kansas City, I at least thought, and the business justified the hotel advertising me as a name orchestra.

Various changes have happened in the business over many years, in which radios have increased the popularity of orchestras for records, and for many other things.

There is no way of telling as to what is going to be what we call a popular name orchestra. There are no

(Testimony of Jules Stein)

ingredients you can put together, whether it be instrumentality of music or any other thing that can tell you in advance. It is a question of popular taste and popular approval. The public is the one that makes the answer and pays off at the boxoffice.

Q. Is the case of popularity of the public constant or [527] fluctuating?

A. It is very fluctuating and very volatile. What is taste today and what is popular today may not be tomorrow. They have gone through various cycles from swing bands, sweet bands, symphonic bands, jazz bands. It has been a cycle that has been running as long as I remember.

Q. Can you give the names of some other bands in the earlier days besides the Jules Stein orchestra or band? I mean, take into the '20's where it began to develop more?

A. Out here in California they had a band by the name of Art Hickman, who was only known in this community. He was not known throughout the country, but he was considered a great name band here. The Abe Lyman was originally from out in this territory. Each city had attractions, or bands, I should say, with local popularity, which, of course, with the advent of radio and records managed to popularize these attractions from coast to coast or internationally.

The Court: I think we will suspend now, gentlemen.

We will take our recess, ladies and gentlemen, for a few minutes. Remember the admonition and keep its terms inviolate, and occupy the jury room.

(Short recess.)

The Court: All present. Proceed.

(Testimony of Jules Stein)

Q. By Mr. Doherty: Mr. Stein, just as we recessed you were telling us about Art Hickman and Abe Lyman, etc. And I [528] had also asked you the question about the constancy of the public's affection. Do you know of any instances in recent years where bands are very popular for a period and then suddenly lost attraction to the public?

A. That is not uncommon, and perhaps there are lists of orchestras throughout the whole United States who have risen in popularity and have achieved a big success, and then either declined gradually or sometimes very quickly. There is an adage that the faster they go up, the quicker they come down. However, that does not hold at all times in the amusement business.

Gus Arnheim, for instance, a local popular attraction many years ago, was taken East and he became very popular throughout the United States. He came back here, and he is hardly considered an attraction or a draw, as we say in the business, here in town. But still I notice in the records that he has played San Diego on several occasions and apparently he was a popular attractions in that city.

It is not unusual for orchestras to have great popularity during certain times, and sometimes it drops off, and then by virtue of some radio broadcast or a record or some unusual incident that we can't put our fingers on, they will revive their popularity and go on for many years.

Some orchestras, like Guy Lombardo, perhaps, goes on for many years. They obtain a simplicity of style, and an [529] unusual type of music that others who try to duplicate undoubtedly have not been so successful in doing.

(Testimony of Jules Stein)

Q. What about Ted Fio Rito?

A. Ted Fio Rito is a similar attraction to Gus Arnheim. He developed tremendous popularity throughout the whole United States, and particularly at certain times when he was writing some songs; and then his popularity declined considerably today, to where he is performing in various places and he hasn't got the same name and reputation, perhaps, as he had before.

We have a relative valuation, determined by the public, either locally or nationally or both.

Q. Did you start out to be a musician?

A. I started as a musician, yes.

Q. At what age?

A. I started as a musician when I was about 8 or 9 years of age, to take lessons.

Q. And did you work at it as a living or as an incident to something else?

A. No; I used it as a means, after I grew up, to take me through school, through college—through medical school, of course.

Q. How far did you go through college?

A. I am a graduate of the University of Chicago, Rush Medical College, from which I have a medical degree; a graduate [530] of the University of Vienna; and also a graduate of the Board of Ophthalmology at the Cook County Hospital.

Q. Were you admitted to practice medicine in Illinois?

A. In the State of Illinois.

Q. What degree did you get from Chicago University?

A. M. D.—no, PHB. PHB and a Master's degree.

(Testimony of Jules Stein)

Q. And what degree from Rush Medical?

A. M. D.

Q. I believe, also, you are a member of the American Federation of Musicians?

A. I have been ever since I played professionally; yes.

Mr. Doherty: I don't want to go any further, your Honor. I might be stepping on the limits of proper examination, so I will not ask any more questions.

Mr. Christensen: May I ask you a few, then?

Re-Direct Examination

By Mr. Christensen:

Q. You first started in this business of booking when you started booking fraternity bands for dances around Chicago; that is right, isn't it?

A. Well, when I was a student at the University of Chicago I arranged for a few orchestras to play in some summer resort engagements in the States of Michigan, Indiana and, I believe, Iowa.

Q. And you have been at that since that time? [531]

A. Well, no. I gave up part of the time when I went to school in Europe, but I also worked as a musician when I came back and during my internship.

Q. Now you have developed Music Corporation of America to where it is the largest booking office in America, is that it? A. Well, I believe it is.

Q. And there has been mentioned here that some orchestras have no names, and you gave one or two illustrations. Can you give us some more?

The Witness: Will you repeat that question?

(Question read by the reporter.)

A. Well, I believe I said they were in rare instances.

(Testimony of Jules Stein)

Q. Well, you mentioned the Casa Loma orchestra and I believe you mentioned another one, didn't you?

A. No; that was the leader.

Q. You can think of no other that has no name?

A. Well, yes. Yes; there are Meyer Davis units which are not represented by any leaders of reputation. The name is a commercial entity under which units operate but still use the name "Meyer Davis"; and those are not directed by the leaders.

Q. Well, I read some place about the band called the Honey Trippers (?) or something like that. I don't attempt to give it to you exactly. [532]

A. I would not be familiar with it.

Q. Or there was a Dixieland band?

A. The Dixieland Jazz Band goes back to the '20's.

Q. How long back would be the Pennsylvanians?

A. Waring's Pennsylvanians are headed by Fred Waring. Those are descriptive terms, and sometimes as popular as the name itself.

Q. And there was the Scranton Sirens, wasn't there?

A. Well, you are going back into quite a period. There was a period in the '20's or early '30's when the public were very receptive to any change of name or any type of description; and we went through a cycle at that time in which you could use various names that were trade names.

There were also the Benson orchestras in Chicago which were similar to the Meyer Davis organization in Boston and Philadelphia. Meyer Davis orchestras still continue, even though they are units, under the trade name, and the Benson orchestras are similar, although they have since gone out of business.

(Testimony of Jules Stein)

Q. So, although they would carry the name "Benson Orchestra", there would not be anyone by the name of Benson leading them; would that be the case?

A. Sometimes that would be the name of the leader, a second name of Benson Orchestra, which apparently Mr. Benson tried to maintain for his own use. [533]

Q. Let me use a fictitious name for the purpose of this illustration. Let me say that John Doakes is an individual and he gathers together half a dozen other musicians who could play; is it your testimony, then, that he could sell it to dance or ballroom operators as a name band?

A. Well, it is a question, again, between the law of supply and demand. During these war years, with the shortage of musicians, we have been able to put together many attractions from places of call and depend upon their reliability for a group of musicians with a leader that would have an organization that they could buy and use in their places.

Q. You would not call it a name band, though, would you?

A. Well, it is, again, a question of what you call a name band. Now, where is the dividing line? ,

Q. There has been handed to me a list of places, a partial list of bands, dance bands, represented by M. C. A. You have seen it, of course, Mr. Stein?

Mr. Doherty: Is that the list that we have submitted to you?

Mr. Christensen: That is it; yes, sir.

A. Yes, I presume this is our list.

Q. Are all of the bands or orchestras listed thereon name bands? A. Yes.

(Testimony of Jules Stein)

Q. They are name bands, every one of them? [534]

A. Yes.

Mr. Christensen: All right. May this be marked for our exhibit next in order?

The Clerk: Plaintiff's Exhibit No. 11.

The Court: So ordered.

(The document referred to was marked as Plaintiff's Exhibit No. 11, for identification.)

Mr. Christensen: That is all, thank you.

Mr. Doherty: Just one question, Mr. Stein.

Re-Cross-Examination

By Mr. Doherty:

Q. You stated that you were the largest organization in the United States. You mean in that particular line? There are other agencies in other lines, artists and vaudeville, aren't there?

A. There are many of them.

Q. That are much larger than you?

A. In certain fields; yes.

Q. When you say you are the largest in the United States, that is just in a particular field?

A. In a particular field; yes.

Mr. Doherty: That is all.

Q. By Mr. Christensen: But in bands and orchestras you are, aren't you, the No. 1?

A. We believe we are. [535]

Mr. Christensen: Thank you.

Now, may I have Mr. Jaffe read the bid?

The Court: Yes.

Mr. Christensen: For the record, the exhibit that is now to be read is Plaintiff's Exhibit 8. It is the bid submitted by plaintiff to the City Council.

(Mr. Jaffe read plaintiff's Exhibit 8 in the following words and figures:)

"Bid for Lease of the Mission Beach Amusement Center

"By: Larry Finley

"712 Bank of America Building

"San Diego, California

"October 30, 1944

"Monday

"To the Honorable Mayor,

"City Council, and

"City Manager

"City of San Diego

"California

"Gentlemen:

"I hereby make application for the leasing of the Mission Beach Amusement Center under the terms of your Document Number 350454.

"Attached is my certified check in the amount of \$1,000.00 which I submit as a guarantee that I will sign [536] the contract if my plan is accepted.

"Following are the terms under which I wish to make my bid for the lease.

"1. Agreed as stipulated.

"2. Agreed as stipulated.

"3. Agreed as stipulated.

"4. Agreed as stipulated.

"5. I agreed to the stipulations of paragraph number 5 and wish to add that I will pay the City of San Diego the sum of \$20,000.00 per year, plus 2% of the 'gross receipts' as rental. The dates that payments shall be

(Plaintiff's Exhibit 8)

made, and the definition of the terms 'gross receipts' shall conform to paragraphs 5 and 7 in the Document.

"6. Agreed as stipulated.

"7. Agreed as stipulated.

"8. Agreed as stipulated.

"9. Agreed as stipulated.

"10. Agreed as stipulated.

"11. Agreed as stipulated.

"12. I agree to maintain and operate the picnic area and playground without charge, I also agree to establish a free policy for the use of horseshoes, nets, balls, etc., in the play area, but reserve the right, if the cost becomes unreasonable, to make a charge for [537] portable athletic equipment of a sum not to exceed 25¢ for each one-half hour of use.

"13. The number and character of devices and facilities for amusement purposes will be determined by my ability to enlist legitimate enterprises in establishing their units in the Mission Beach Amusement Center. It is impossible to state in advance the number and character of these facilities and devices inasmuch as a prospective lessee cannot obtain definite commitments from concessionaires until a definite lease with the city has been obtained. When this has been done, I shall personally visit the outstanding parks and carnivals in the country and solicit such recreational devices as will elevate the prevailing standards of the Mission Beach Amusement Center. I definitely pledge that there will be no gambling devices—there will be no immoral girl shows—that only business-like projects will be tolerated, and these must conform to the over-all objective—to establish a municipal recrea-

(Plaintiff's Exhibit 8)

tional park conforming in dignity, honesty, and service with our other public amusement facilities, such as the Municipal Plunge, Park Zoo, and Playgrounds, and conducted on a plan that would be a credit to the extensive developments now being considered for [538] Mission Bay.

"As evidence of my sincerity in connection with this plan I agree to the following ceiling prices on amusements and foodstuffs:

"Hot dogs—not to exceed 10¢.

"Hamburgers—not to exceed 15¢.

"Strict enforcement of OPA prices on all other foodstuffs.

"Soda pop—not to exceed 10¢.

"Milk—not to exceed 10¢.

"Buttermilk—not to exceed 10¢.

"Strict enforcement of OPA prices on all other soft drinks.

"Amusement games—5¢ and 10¢.

"Electric rides—10¢ and 15¢.

"Shooting gallery—25¢.

"14. I agree to provide daily, free of charge to the public, featured acts and special attractions from May 15th to September 15th, inclusive, of each year, for the purpose of creating interest and enjoyment to visitors of the park. I expect to extend this period of time to more days per year, but guarantee the above minimum number of days.

"A friendly and extensive effort will be made to induce organizations, factories, business firms, etc., to hold their picnics and parties at the [539] Amusement Center on the enlarged and improved picnic ground. The picnic

(Plaintiff's Exhibit 8)

ground will be maintained in such a way so that it will encourage large group picnics.

"I agree to establish and properly equip a free playground exclusively for small children with various devices necessary for their pleasure; to maintain and have the area properly supervised by an attendant so that parents, who are not fortunate enough to have household help take care of their children, can enjoy freedom for swimming or other recreation, while their children are playing under competent supervision and care.

"I agree to sponsor special days of interest to the San Diego people from other states, such as 'Texas Day', 'Oklahoma Day', etc.

"I agree to have special 'Kid Days' with features such as clown, free candy, free ice cream, plus special attractions by which means we will make the children of San Diego feel that Mission Beach Amusement Center is really *their* park.

"I agree to sponsor various contests, such as bathing beauty contests, etc., not only for the purpose of community interest but also as a device to gain publicity for the Amusement Center, as well [540] as favorable national publicity for the City of San Diego.

"I agree to reserve one night during each week and operate it as a special night for the enjoyment of the service personnel. This night is to have special features and reduced prices as added inducements, such reductions to provide soft drinks being sold for five cents and hot dogs for five cents.

"I agree to donate the ballroom and all of its facilities one afternoon per week to the USO at no charge whatsoever, and also to donate the Mission Beach Ballroom

(Plaintiff's Exhibit 8)

on any afternoon to any military organization, whose project is approved by the City Council, at no charge to these organizations. I will pay all utility and cleaning-up costs for the USO or these other approved military organizations.

"15. I agree to operate the Amusement Center without interruption from May 15th to September 15th, inclusive, of each year, and shall endeavor to extend this period of time to a year round basis by proper advertising, promotion, activities, and inducements. I also agree to comply with the other specifications of paragraph 15.

"16. Agreed as stipulated.

"17. I am a permanent resident of the City of San [541] Diego, owning my own home and at the present time I am successfully engaged in the amusement business as the operator of the Ratliff Ballroom. I also have an application on file with the Federal Communications Commission on which approval is pending for the construction of a radio station in San Diego. My experience in the amusement and entertainment world has been varied and extensive for the past twenty years, having been successfully connected with radio, theatre, and ball-room enterprises. In the retail business I operated on a large-volume, low-profit policy—and I am convinced that the same plan can be carried out successfully in the amusement business and at a great advantage to the city and its residents. My experience as a business man has been very stable having successfully operated a chain of retail stores in Southern California. I achieved the reputation of being the outstanding promotion and advertising man in my field in the entire United States. Proof of this reputation is supported by free space in leading

(Plaintiff's Exhibit 8)

publications, such as a full page in Life magazine, write-ups in Time magazine, articles in various trade publications, mention on many coast to coast broadcasts by various commentators as well as publicity and pictures in over 300 newspapers in the [542] United States. My wide-spread experience in promotion and publicity will be a valuable contribution to the successful operation of the park. A great part of my amusement and entertainment experience has been more civic in nature than as a means of personal profit and it is from the civic standpoint that I expect to operate the Amusement Center. Testifying both to my ability as a business man and indicating the reaction to my part in civic affairs in my former home, Burbank, California, I am enclosing letters from the Mayor, three councilmen, a banker, the Chamber of Commerce, a publisher, and a judge. (See enclosure 'A')

"I shall also be happy to submit a certified statement showing a net worth in excess of \$100,000.00.

"18. I agree to operate the ballroom six nights each week from May 15th to September 15th, inclusive, of each year, utilizing a policy of presenting famous 'name' orchestras and 'name' attractions, through an arrangement with nationally known booking agencies. I am attaching to this bid, letters from two of these agencies, the William Morris Agency, and the Frederick Brothers Agency. (See enclosure B) both of whom have under contract many of the most famous attractions and bands in America. Famous bands and attractions from [543] many other booking agencies are also available, and it will be my policy to present only the greatest attractions in the country at the ballroom.

(Plaintiff's Exhibit 8)

"In addition to the day stipulated above during which time I agree to operate the ballroom, I shall endeavor to with the full resourcefulness of my ability and knowledge to continue dancing at the ballroom the year round on a basis of six nights per week, observing this policy simply as a means of attracting people to the park and to make a year round amusement zone for the benefit of the public. Should this operation become too costly from a standpoint of good business judgment I will at my own option change the policy to whatever policy I deem best for the benefit of the park. I do guarantee, however, that during the season from September 15th to May 15th that I shall hold dances at the ballroom at least one night each week with every effort made to include the greatest number of days possible.

"I agree to use all practical methods of advertising for the park and the ballroom including newspapers, billboards, street cars, street cans, broadcasts, etc. Our advertising will feature a theme of 'An Amusement Center for the Entire Family.' [544] ,

"I agree to secure a radio broadcast hook-up from the ballroom for local radio advertising, and also every effort will be made to secure a national hook-up for broadcasting music from the ballroom, which would advertise San Diego to the entire country.

"I agree to prohibit the consumption of every type of alcoholic beverage in the ballroom, and shall employ a policeman and police matron to maintain a creditable standard of dignity and to assure the fact that the ballroom will be operated in a manner that parents will be happy to permit their sons and daughters to spend an afternoon or evening of fun at the ballroom without fears

(Plaintiff's Exhibit 8)

or qualms. In this connection I am pleased to invite the investigation of the City Council into the policy of conduct maintained in the Ratliff Ballroom, which I am operating at present.

"19. I fully agree to this paragraph as stipulated and wish to add this further agreement. No persons in possession of intoxicating beverages will be permitted on the Amusement Center property (beer or wine excepted). A checkroom will be established near the entrance of the park where persons must check their bottles, which will be returned to them on their way [545] out of the park. A strict system of policing will be arranged to see that persons removing their bottles from the checkroom will definitely leave the premises.

"20. I agree to paragraph 20 as stipulated and I am enclosing a letter from the bonding company as requested. (See enclosure C)

"I also propose to change the specifications of sub-paragraph c and sub-paragraph bb as I do not feel that with my personal financial standing and looking to the protection of the City of San Diego and its citizens, who visit the park, that the limits are set high enough.

"Under sub-pargraaph c you stipulated the Owners', Landlords', Tenants' policy for \$10,000-\$50,000 limit. I propose to raise this to the highest amount that will be issued by an insurance company, said amount not to exceed \$50,000-\$500,000 limit. Also, in paragraph bb I proposed to raise the limit on operation of mechanical devices, etc., to \$15,000-\$30,000 instead of \$10,000-\$15,000 that you have stipulated. I feel that everyone concerned should have this added protection.

(Plaintiff's Exhibit 8)

"21 to 37. Inclusive. Agreed as stipulated.

"In addition to the specifications set forth [546] in your Document Number 350454 I am including as a part of my bid the following conditions which I feel are necessary to the accomplishment of your determination to establish and maintain a better Civic Amusement Park.

"a. I agree to give precedence to residents of San Diego in the leasing of concessions and for employment. Of these I shall favor men and women returning from the armed services of our country. Should I feel that any particular service man or service woman is capable and deserving of operating a concession, but does not have sufficient personal capital, I shall aid in their individual needs. At the same time I shall not demand any remuneration other than the rental percentage established for all sub-lessees.

"b. I agree to have competent maintenance crews maintain cleanliness of restrooms and lavatories, picnic ground, streets, walks, and all other areas included in the boundaries of the leased property. I agree to keep restrooms open for public convenience at all times, and to provide covered trash cans in sufficient numbers to encourage cooperation of the public in keeping the Beach Center clean.

"c. I agree to maintain the picnic ground in a [547] manner which will encourage the use of the premises by the citizens of the community. I shall install various outdoor pits for cooking purposes and incorporate many new features for the convenience of the public.

"d. I agree to establish and maintain an information booth or courtesy booth, where a trained attendant will

(Plaintiff's Exhibit 8)

issue information concerning the park, its free facilities, the rules governing the privilege of beach fires, safety of the surf, use of the picnic grounds, and diagrams of the location of various facilities, as well as other information regarding the beach and other attractions in the San Diego area usually much desired but seldom supplied a visitor.

"e. I agree to establish at least one concession, and more should business warrant, which will specialize in the selling of dairy products for children. This concession will be known as the 'milk Bar' and will occupy a favored space in the amusement Center.

"F. I agree to turn over the entire facilities of the Mission Beach Amusement Center to the City Welfare Department or any other organization designated by them for at least one afternoon per week, with the [548] object that this be used for the purpose of carrying out a vocational program for youth. I shall cooperate to the extent of turning over management, operation, publicity, policing, etc., for these afternoons, which will be utilized as a means to carry out a very fine youth project, keeping youth occupied and at the same time giving them a complete understanding of business operation. Special entertainment features will be arranged for these days and with proper cooperation they will develop into one of the most interesting and important youth activities in the country. I shall at all times cooperate with the Coordinating Council, P. T. A. and the City Welfare Department.

"g. I agree to set aside one complete week during the period of time from May 15th to September 15th, inclu-

(Plaintiff's Exhibit 8)

sive, of each year, and during this week we shall donate 10% of the 'gross receipts' of the Misison Beach Amusement Center to any charity or charities designated by the City Council. These 'gross receipts' shall be defined as all money taken in by all concessions and shall not constitute the meaning of 'gross receipts' as defined in your Document Number 350454 in paragraph 5. This week shall be known as 'Charity Week' and will be established as [549] a major promotion during our busy season.

"h. I agree to fully protect the patrons from annoyance by barring and expelling from the premises all persons of a lewd, dissolute, or obnoxious nature, suspected of, or guilty of, rowdyism, vandalism, or persons in an intoxicated condition.

"i. I agree to solicit the cooperation of the Health Department to assist in setting standards that will establish cleanliness of the property, disposal of garbage, drainage of sewage, and the physical health of all people dispensing food.

"j. I agree to furnish the park with proper police protection. It is my understanding that at the present, policing is done by the San Diego Police Department and I shall request that additional policemen be stationed at the park at all times to enforce the rejection of undesirable or drunken patrons, to maintain our rules as to moral standards, to prohibit the presence and use of alcoholic beverage (other than wine or beer) and to properly protect the amusement zone, picnic ground, beach fronts, parking lots, and the ballroom. To cooperate in the policing of the area I agree to maintain on my payroll during the entire year at least two private policemen and

(Plaintiff's Exhibit 8)

more when it becomes necessary. These private policemen [550] will work with, and cooperate with, the San Diego Police Department. Our policy of running a fine park will require the strictest of policing and I agree to see that our pledge to run a fine park will not be violated.

"k. I agree to show at least twice monthly, free movies for the children, which will probably take place on Saturday afternoons or on holidays. This stipulation shall be subject to the approval of the Fire Department and Necessary City regulations governing the showing of movies in a ballroom.

"l. I agree to have all employees of the park fingerprinted and photographed and the records turned over to the City of San Diego Police Department for approval before employment.

"m. I would like to have the City erect a building when conditions permit, or, as a temporary measure, to purchase an available army barrack for the purpose of establishing a Youth Center, where youth could carry on its own various projects. I would agree to maintain this building and be responsible for proper supervision. I am quite certain we could receive the assistance of some welfare organization or organizations, and such a project with all of its advantages would serve to make youth feel that Mission Beach Amusement Center is really [551] their own park.

"n. I agree to establish the board walk as a fun and food zone and every effort will be expended to create an environment that will attract people to the board walk.

(Plaintiff's Exhibit 8)

"The possibilities of creating a public service beyond conception is inherent in the facilities of the Mission Beach Amusement Center. The alteration, development, and conduct of this park presents a challenge to my ability and financial condition that I would like to accept. My program is based entirely upon my vision of converting every dollar of its value into an expansive, wholesome, municipal playground devoted to the public good. In order to operate Mission Beach Amusement Center as an asset to the community instead of a liability, and to offer the public low prices plus the many advantages which I propose to offer, then it is necessary to sacrifice a percentage of the profit.

"To this end, I need one consideration from the city officials. The features which are incorporated in my proposal, together with the establishment of prices geared to the pocket of a school-boy, and the service man, and the non-profiteering of civilians, will not pay the operator a large cash profit. On this basis I cannot [552] sincerely obligate myself to pay an excessive rental. My plan is founded on a careful estimate of the income of the beach as operated under the enclosed proposal. My agreed percentage of rent payable to the City is the maximum allowable if we are to succeed in the major objective—to create a park for the citizens of San Diego.

"With high present day costs of labor and foodstuffs you can readily see where everyone concerned would have to take a smaller percentage of the profit in order to make for a successful operation under my proposed low ceiling of prices. It is necessary to operate the park just as if it were a civic operation with a civic purpose, to

(Plaintiff's Exhibit 8)

run it on a higher level with a policy not primarily for profit but rather a policy for service to the citizens of the community, with a definite thought in mind for post-war planning as well as for the present.

"The citizens of San Diego have a right to expect that in a municipal owned park, even though it would be leased to an individual, that one should be able to enjoy decent food at reasonable prices, that they should have a park where they can spend a pleasant afternoon or evening without subjecting themselves to unscrupulous profiteering. They are entitled to dance in a ballroom [553] of refinement. They should have proper protection, and they certainly are entitled to a good, clean, wholesome park.

"The parents in this community must be made to feel that in sending their sons or daughters to the Amusement Center that they will be sent to the most wholesome, best protected, cleanest park in the state. They must be made to feel that for their small children, that the attractions will be interesting, that the equipment in the playground will be the finest available. They must be made to feel that the Mission Beach Amusement Center can offer and does offer their older sons or daughters a place for fun and relaxation, and not a place where they can get into trouble. They certainly are entitled to all of these features in a municipal owned park and I agree to see that they receive all of them, plus many more features.

"Personal profit is going to be sacrificed in part for community service, and I agree to operate the Amusement Center so that service personnel and civilians alike can go with the minimum amount of money and derive the

(Plaintiff's Exhibit 8)

maximum amount of fund and pleasure—clean, wholesome fun and enjoyment—to have the type of park where 'teen-agers' as well as older folks can spend their afternoons or evenings without the fear of [554] vandalism, embarrassment, or rowdy acts marring their good time—a park where down-to-earth prices prevail—a dime for a soft drink, a dime for a hot dog, a dime for amusement in the fun zone and above all, a park where the operation of the entire area will be a definite asset to the city—a park where you and the citizens of this community will be proud and glad to take the entire family.

"It is clear to me from the terms and specifications of the contract that the city officials are making a determined effort to deliver this property to the people under terms that will insure its greatest possible service. I understand its terms and its intent, and it is with this thought in mind that I submit my bid.

"Respectfully submitted,

"(Signed) Larry Finley" [555]

Attached thereto are letters.

From William Morris Agency, Inc., Beverly Hills, California:

"September 13, 1944

"Mr. Larry Finley,
718 Bank of America Bldg.,
San Diego, California

"Dear Mr. Finley:

"Pursuant to our telephone conversation of today, if you complete your plans to take over the Mission Beach

(Plaintiff's Exhibit 8)

Ballroom in San Diego, we should be happy to arrange our various name bands for appearances with you when they are available in this territory.

"A partial list of our attractions include:

"Georgia Auld	Neil Bondshu	Henry Busse
Count Basie	Del Courtney	Al Donahue
Al D'Artega	Billy Eckstine	Earl Hines
Duke Ellington	Enric Madriguera	Hal McIntyre
Vaughn Monroe	Artie Shaw	Boyd Raeburn
Carl Ravazza	Ozzie Nelson	Freddie Slack
	Paul Whiteman	

"I'd appreciate your calling me when you are in Los Angeles so we can discuss your policy further and at that time I can possibly give you tentative dates when the above orchestras will be available.

"Cordially,

"Jack Flynn,
William Morris Agency, Inc." [556]

"City of Burbank
California

Office of the Council
"September 28, 1944

"The Honorable City Council
City of San Diego,
California

Gentlemen:

"Regarding Mr. Larry Finley, I wish to inform you that I have known Mr. Finley for the past six years, he being a leading business man here in our City of Burbank.

(Plaintiff's Exhibit 8)

"Mr. Finley is, in my opinion, a genuine American citizen, the type of an individual that is always interested in worth while civic affairs, and a citizen that would be a credit to any community.

"I am confident that you will never have reason to regret any consideration given my friend Larry Finley.

"Very truly yours,

"Walter R. Hinton,
Mayor of the City of Burbank."

"City of Burbank
California

"September 27, 1944 [557]

"Honorable City Council
City of San Diego
California

"Honorable Body:

"It is with a great deal of pleasure that I write to you in regard to Mr. Larry Finley, a former business man of Burbank. I wish to tell you that Mr. Finley conducted himself and his business operations in such a fine manner and was such an enthusiastic worker and contributed to all of our local and civic enterprises that he will be a credit to any community that he may locate in. I personally would be pleased to have him in Burbank and we miss his presence and assistance in our city. I have worked side by side with him in our numerous War Bond Drives and found him to be not only a fine gentleman

(Plaintiff's Exhibit 8)

but a man full of ideas and help that made it very easy for some of us to make a success of our drives.

"I do hope that you will be able to assist him in any plans he might have.

"Thanking you, I remain

"Yours very truly,

"Horace V. Thompson, Councilman."

On the stationery of the City of Burbank, California, [558] October 4, 1944, addressed to:

"City Council
City of San Diego

"Re: Larry Finley

"Gentlemen:

"I have known the above gentleman, Mr. Larry Finley, for approximately the past five years. During this time, Mr. Finley was in the jewelry business in the City of Burbank.

"Immediately upon Mr. Finley's arrival in the City of Burbank, approximately five years ago, he became very active in civic affairs, Chamber of Commerce and other worthwhile activities.

"He conducted one of the most successful businesses in the city. I have always found him to be just, fair and a man to live up to any agreements that he may have made.

(Plaintiff's Exhibit 8)

"I have personally done business with him and have found him to be exceptionally well qualified as a business man.

"Yours very truly,

"Paul L. Brown,

"Police Commissioner,"

Another letter on the stationery of the City of Burbank, California, dated October 2, 1944, addressed to: [559]

"City Council
City of San Diego
California

"Gentlemen:

"The bearer of this letter, Mr. Larry Finley, has been actively engaged in the jewelry business, in the City of Burbank, for the past four or five years; during which time he has been a resident and quite active in local civic affairs.

"I have personally known and transacted business with Mr. Finley, and have found him to be a man of integrity. Any consideration you may show to him will be appreciated.

"Cordially yours,

"Albert J. Rediger."

(Plaintiff's Exhibit 8)

On the stationery of the City of Burbank, California,
September 27, 1944, addressed to:

"To the Honorable City Council
City of San Diego
San Diego, California

"Gentlemen"

"I have been informed that Mr. Larry Finley, who was in business in this city, is desirous of making some connections in your city. [560]

"For your information I have known Mr. Finley personally ever since he came to Burbank and consider him a good businessman and a very fine citizen.

"Mr. Finley has been very active in civic matters, bond drives, and many other things during his residence here. We have always considered him a valuable asset to the community. He is a fine fellow, energetic, and has always taken a personal interest in his fellow man.

"Anything you may do for Mr. Finley will be very much appreciated by me and I am sure that your city officials will never have cause to regret giving him every consideration.

"Very truly yours,

"R. L. Reid,
Police Court Judge."

(Plaintiff's Exhibit 8)

"Burbank News

"Sept. 27, 1944

"City Council

City of San Diego

San Diego, California

"Honorable Gentlemen:

"I am writing this letter to ask that you do everything in your power to assist Mr. Larry Finley. [561]

"It has been my pleasure to have known and worked with this fine gentleman for the past several years in various civic, city and business matters. Here in Burbank he was looked up to by everyone as an aggressive, community-minded, fair and honest and most willing worker in community undertakings. In a business way, where I knew Mr. Finley even more intimately, I found him at all times most honorable, fair, very aggressive, intelligent and reliable.

"Without hesitation I can certainly recommend Mr. Finley to you and the City of San Diego. My only regret is that he no longer is here with us in Burbank.

"Very sincerely yours,

"James E. Lintner, Publisher, Burbank News."

(Plaintiff's Exhibit 8)

"Burbank Chamber of Commerce

"September 21, 1944

"Honorable City Council
San Diego, California

Gentlemen:

"It is with pleasure we write this letter on behalf of Mr. Larry Finley, who for several years was an active business man of Burbank.

"Mr. Finley, during his several years activity here, was not only one of our most active merchants [562] but he gave unstintedly of his time in assisting us in our various civic activities. At no time have we ever heard anything detrimental to Mr. Finley's character and we are very pleased to write you this letter in his behalf.

"Very truly yours,

"Burbank Chamber of Commerce

"By C. C. Richards, Jr.,

"Secretary-manager."

This letter is on the letterhead of the Bank of America, Burbank, California, September 27, 1944.

"Honorable City Council
City of San Diego
San Diego, California

"Gentlemen:

"This letter is being written to give you the benefit of my past experience and knowledge of Larry Finley, formerly of Burbank who is now located in your city.

(Plaintiff's Exhibit 8)

"Mr. Finley was a resident of Burbank for a period of approximately five years during which period of time he was engaged in the jewelry business.

"During the interim that Mr. Finley was located in Burbank he was quite successful from a financial [563] standpoint, and at the time of disposing of his business, represented considerable financial strength, the major part of which was in liquid form.

"While here he was also quite active in civic affairs as well as taking a very active part in the various bond drives. He was a member of the local Chamber of Commerce and was well regarded by the various merchants in our city.

"It is my opinion that he would never abuse any consideration shown him.

"Very truly yours,

"J. L. Hey, Manager."

This next letter is on the stationery of Robert F. Driver, General Agents, 626 Commonwealth Building, San Diego, California.

"October 26, 1944.

"The City of San Diego,
Civic Center,
San Diego, California.
"Attention: City Manager
"Gentlemen:

"We wish to advise that our Company, The Pacific Employers Insurance Company, will supply a performance

(Plaintiff's Exhibit 8)

bond to the City of San Diego on behalf of Mr. Larry [564] Finley in connection with his bid to the City on the Mission Beach Amusement Center, in the amount of \$20,000 which is in accordance with specifications in bid instructions.

"Yours very truly,

"Pacific Employers Insurance Co.

"Robert F. Driver, Attorney-in-Fact."

A letter on the stationery of Frederick Bros. Agency, dated September 14, 1944, addressed to:

"Mr. Larry Finley,
#718 Bank of America Bldg.
San Diego, California

"Dear Larry:

"As per our recent phone conversation wherein you stated that there was a possibility of your leasing the Mission Beach Ballroom, I am herewith listing some of our attractions that would be available for your use in the near future. I would like to say and remind you again that should this happen we can supply you some of the greatest name attractions in America today and naturally, we would like to do it on an exclusive basis and by our having your place exclusively you could be assured of nothing but the finest talent in the business. [565]

"The following is a list of the orchestras that would be available for your place:

"Lawrence Welk and His Champagne Music:

(Plaintiff's Exhibit 8)

Ina Rae Hutton and Her Famous Orchestra;

George Paxton, 23 piece band breaking records Rose-land Ballroom, New York;

Milt Britton, world's greatest comedy and dance band;

Ray Herbeck and His Columbia Recording Romance and Rhythm Orchestra;

Ada Leonard and Her All American 18 Piece Great Orchestra;

Tommy Reynolds, America's young 'Swing King';

Anson Weeks, famous 'Let's Go Dancin' With Anson' Orchestra;

Carlos Molina, just closed sensational 16 week engagement Palace Hotel, San Francisco;

Col. Manny Prager, ten years on Ben Bernie's show;

Don Reid Orchestra, now in 9th month at Trianon Ballroom, Chicago;

Pinky Tomlin Orchestra;

Phil Levant Orchestra;

Billy Bishop, now Aragon Ballroom, Chicago.

"Also we have in colored bands:

"Fletcher Henderson's World Famous Orchestra;

Ernie Fields' Okey Recording Orchestra; [566]

"The 18 International Sweethearts of Rhythm.

(Plaintiff's Exhibit 8)

"The foregoing is a partial list of some of our larger names and when the time comes, I can give you many more to choose from.

"Also I am listing a few of the names that will be available to you:

"Willie Howard	Rufe Davis
Ella Mae Morse	Belita
Bonnie Baker	The Condos Brothers
Fifi D'Orsay	Judy Starr
Dorothy Donegan	Ida James

"Larry, I hope the above list which is only a partial list of the artists we represent exclusively, will supply the information you need. You, of course, realize we are one of the four largest agencies in the business today and the above is only a partial list of the attractions we can offer you when the time warrants.

"I am looking forward to seeing you again in the very near future and I hope and know as always your business venture will be a great success.

"If there is any added information you need as to our available talent, please do not hesitate to call upon me as it would be a pleasure to be of service to you.

"Sincerely
"Billy."

Typed, "Billy McDonald, Frederick Bros. Agency, Inc." [567]

Postscript: "We also have innumerable screen stars under contract to us. I can supply this list at your request."

Initials typed, "BM."

That is all.

The Court: I think it is about the hour of adjournment.

Now, ladies and gentlemen, we will take a recess in this case until Monday morning at 10:00 o'clock. During the recess and throughout the case, ladies and gentlemen, do not read any mediums of publicity concerning this case, either in newspapers, trade journals, magazines, radio scripts, or any other method of communication. Let us try the case in the court room, and exclusively here. If you happen to be a radio fan and turn on your radio and some so-called commentator is discussing this case, please turn the radio to some other more interesting and more helpful program. I am sure you will get all of the aid you need in this case from the lawyers in the case, and from the witnesses, and from the instructions of the court from the bench, so that it is not necessary to be at all curious or to have any interest in any outside communications that may come your way.

Remember that, ladies and gentlemen, and be here on Monday morning at 10:00 o'clock.

(Whereupon, at 4:30 o'clock p. m. February 1, 1946, an adjournment was taken until 10:00 o'clock a. m., Monday, February 4, 1946.) [568]

Los Angeles, California, Monday, February 4, 1946.
10:30 a. m.

The Court: All present. I am very glad that I did not inconvenience you too much, ladies and gentlemen, as well as counsel. Proceed.

Mr. Doherty: If the court please, I just spoke to Mr. Christensen. I see Mr. Dailard is in the court room. I would like to ask him one question to clarify one fact for the jury, that I did not ask him when he was on the stand.

The Court: Very well. Call him.

Mr. Doherty: Mr. Dailard, please.

WAYNE W. DAILARD,

recalled as a witness on behalf of the plaintiff, having been previously duly sworn, was examined and testified further as follows:

Re-Cross-Examination (Continued)

By Mr. Doherty:

Q. Mr. Dailard, you have already been sworn. In both your direct and cross-examination on the stand the other day, you were asked about the profits at the Mission Beach operation, and you gave certain totals.

A. That is correct.

Q. Now, were those totals the profits from the entire operation of Mission Beach, or just a portion of them?

A. The entire operation. [570]

Q. Can you break down the amount that would have been earned or was earned by the Ballroom, as distinguished from the recreation area?

Mr. Christensen: May I ask one question on *voir dire* before the question is answered:

(Testimony of Wayne W. Dailard)

The Court: Yes.

Mr. Christensen: Have you brought all records of the profit and loss statements showing that?

The Witness: I haven't, no.

Q. By Mr. Doherty: You haven't them with you?

A. No, sir.

Q. But in your computations did you keep a separate record as to the amount you earned in the Ballroom as distinguished from what you earned in the rest of the recreation area? A. Yes, sir.

Q. Now, in 1943 you gave your total net earnings for the Mission Beach operation of \$72,759.66, and in 1944 the total net earnings by the Mission Beach operation was \$79,924.53. What portion of that was earnings of the Ballroom as distinguished from the rest of the operation?

A. I imagine about 25 per cent. I think it would run close to 25 per cent.

Q. Was it more or less than 25 per cent for each year?

A. It could have been less in '43. [571]

Q. Would 25 per cent be your best estimate for 1944?

A. Yes.

Mr. Doherty: That is all.

Re-Direct Examination

By Mr. Christensen:

Q. You have no records of this at all, is that right, Mr. Dailard?

A. Not with me, no.

Q. When did you last check those records?

A. I took my total profit and loss figures off about 10 days ago.

(Testimony of Wayne W. Dailard)

Q. Well, when did you last check as to your Ballroom, as distinguished from your entire operating profits?

A. At that time it was kept as a separate account.

Mr. Christensen: All right. Thank you very much, sir.

Mr. Doherty: That is all, Mr. Dailard. You will still keep yourself available for we may need you for testimony on other issues, please. [572]

The Court: Call your next witness.

Mr. Christensen: Mr. Finley, please.

LARRY FINLEY,

the plaintiff herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Christensen:

Q. Your name is Larry Finley; is that correct, sir?

A. Right.

Q. And you live here in Los Angeles, do you, sir?

A. Right.

Q. With your wife and family? A. Right.

Q. I believe you are 32 years of age, are you, Mr. Finley? A. Right.

Q. You are interested in the band and entertainment business? A. Yes.

Q. For what period of time have you been interested in that business, sir? A. Since 1928.

(Testimony of Larry Finley)

Q. What was it that you were doing at that time?

A. Well, in 1928, right after I finished high school, [573] I went to work for the Station WSYR in Syracuse.

Q. That sounded like a radio station, is that right?

A. That is right. I went to work for WSYR in Syracuse, both in the commercial and announcing staff and had quite a bit to do with the production of shows.

Q. That is radio shows, I take it? Is that correct, sir?

A. That is right.

Q. How long did you remain at that occupation?

A. Well, not too long. I learned a bit of the band business and decided to go out on the road with a band. I had my own band, not as a regular occupation or diet, but for a period of—

Mr. Christensen: Keep your voice up, sir.

A. —for a period of approximately two years, I should say.

Q. Your statement is not quite clear to me: “not as a regular business.” Explain what you mean, sir.

A. Well, in those days, the music business was none too remunerative financially, and I am employed in a jewelery store in Syracuse and used to take engagements at nights or on Sundays, and during the summer months I would leave town with the band for a week or a month or two-month engagement, whatever there would be.

Q. You were the leader and organizer of the band, I take [574] it?

A. Yes; that is right.

Q. And that continued for how long, sir?

A. Do you mean the band business or the general entertainment business?

(Testimony of Larry Finley)

Q. Well, that occupation or those occupations, working the jewelry store in the daytime and bands evening and summers; how long did that last, sir?

A. For about two years.

Q. What did you next do?

A. Well, I became advertising manager of the Penfield Manufacturing Company in Syracuse.

Q. What is that?

A. That is a firm devoted to the manufacture of bedding?

Q. Of what? A. Bedding, mattresses.

Q. Oh, I see. And your work there was promotional and advertising?

A. Yes. It had to do mostly with radio promotion. We had a mattress that we called the Ever Rest mattress, and in order to promote the sale of it I conceived the idea of getting a singing team, two people, and we called them "The Ever Rest Boys". We presented them on the radio all through New England, and I also arranged for personal appearances of this team in various theatres throughout New England, [575] mostly at luncheon clubs, Kiwanis, Rotary, Lions, etc.

Q. That began about when, sir?

A. That is quite a ways back, Mr. Christensen. I believe it was in—I believe it was in '32, or it might have been '33.

Q. And it continued for a period of how long?

A. A year.

Q. And then what did you do next?

A. My next step into the entertainment business was to assume management of the Cafe DeWitt in Syracuse. The cafe DeWitt was a half-million-dollar night club

(Testimony of Larry Finley)

that had the reputation at the time of being the finest night club in New York State. I took that club over in January of 1934—yes, January of 1934, operated it for a six-month basis or for six months, I should say, which was just prior to my coming out here to California.

Q. Operating the restaurant, what, if anything, did you have to do with entertainment there, bands and similar attractions?

A. Well, I booked bands; I booked and produced my own shows. We had at that time the finest name bands appearing there and we had some very large shows. We had as many as 60 people in our shows there. I might add that the club was a "white elephant" when I took it over, and it was the only time in the history of the club that it showed a profit, [576] was the six months that I had it.

Q. Then, you next did what, sir?

A. Came to California on a vacation.

Q. That was in 1934, I take it?

A. 1934; that's right.

Q. And? A. Liked it and stayed.

Q. You have done something since then. Will you start with when you came and tell us what it was, sir?

A. Well, when I first came out to California I wanted to stay in the entertainment business and I called on several places, tried to get a job and didn't have any luck. I covered all of the radio stations and found that I couldn't make a living wage in radio at the time, went out to what was then called the Cotton Club—Frank Sebastian owned it—spent about a week with Frank, trying to get a job and couldn't, and decided that I would go back to the jewelry business.

(Testimony of Larry Finley)

Q. Did you?

A. Yes, I did. I went to work on Broadway in a jewelry store.

Q. How long did that last?

A. Well, my first job lasted two weeks and then I was offered another job with another store and that job lasted over five years. [577]

Q. Which one is that, sir?

A. That was with the Hudson Diamond Company.

Q. And then you went into business for yourself, didn't you? Or in partners with somebody?

A. Yes. In 19—1939—it was October of 1939 I went into business for myself.

Q. Where was that?

A. I opened a small store in Burbank, did quite well with it, and within a period of a year's time I was operating three stores in the Valley.

Q. And did you do any promotional or advertising work there?

A. Yes. You see, Mr. Christensen, I really don't know a great deal of the jewelry business. My main forte has always been promotion. And I applied showmanship to the jewelry business, plus the fact I gave people very good values, and made a very nice success out of the jewelry business. Practically everything we did was promotion.

Q. Well, can you illustrate?

A. Well, I was very active civically, as you know, with various bond drives. I staged a picnic for the Lockheed Aircraft Company employees at Santa Anita Park. We had over 80,000 people there; I put on various dances at the Casino Gardens.

(Testimony of Larry Finley)

Q. Tell me about that. That was what I was really [578] asking you about, without trying to direct your attention to it definitely.

A. Well, I rented the Casino Gardens for an evening, took a dull evening—

Q. Now, would you permit me to interrupt? That Casino Gardens is the same Casino Gardens we have been talking about here? A. Yes, it is.

Q. It has the ballroom situated in the Ocean Park location?

A. That is correct. I took the Casino Gardens over. Usually it was on a Tuesday or Thursday night, and issued tickets. We would print as many as 10,000 tickets, and distributed them to the aircraft workers at Lockheed. There was no obligation to these people. We would stage a private dance for them on an evening. We would give them a thousand dollars in merchandise prizes that night. I would arrange for some of my friends in the band business and picture business to come down and make a personal appearance. We had as many as 7,000 people there in one night.

Q. How many of those dances did you put on?

A. Oh, probably half a dozen. Then we had other lines of promotion work. We were the first store in the country—we originated—we have been credited by Prentiss Hall as originating— [579]

Mr. Doherty: Just a minute.

Q. By Mr. Christensen: Just tell us what you did, not with Prentiss Hall, for instance. That does not even

(Testimony of Larry Finley)

register with me, and probably with no one else. But tell me what you did yourself.

A. Well, I was the first store in the country to sell work uniforms in a jewelery store for the aircraft workers at Lockheed. We opened several thousand accounts that way.

Here, three years ago, during the height of the shortage of alarm clocks I put on an alarm clock sale that received a full page of publicity in Life Magazine and a quarter page in Time.

I had radio broadcasts originate from the store in line with bond drives; sold 6,000 goldfish one Saturday in the jewelery store, and through a lot of promotion that we were doing. [580]

Q. All right. And that continued for how long, sir?

A. In the jewelery business?

Q. Yes. A. January of 1944.

Q. Then what did you do?

A. I went to New York City, moved to New York.

Q. What did you do there?

A. I went in the watch importing business in New York City. We imported watches for the Army primarily.

Q. How long did that continue, sir?

A. It continued until July of the same year.

Q. July of 1944? A. That's right.

Q. Then you came back out here?

A. Then I came back out here.

Q. What did you do upon returning here, sir?

A. Well, I came back, or, I should say I went to San Diego after filing an application in Washington with the F. C. C. for construction of a radio station.

(Testimony of Larry Finley)

Q. That is the Federal Communications Commission, I take it, sir?

A. That's right. We filed an application in Washington.

Q. Who is "we"?

A. I had a partner in that.

Q. What is his name? [581]

A. McKinnon.

Q. That is Clinton McKinnon, the publisher of the San Diego Journal?

A. Correct. We filed an application in Washington, I believe it was in July, and not knowing how long it would take for the application to go through, I immediately went back to San Diego.

Q. Go ahead and tell me what you did, please, sir?

A. I got back there and got tired of waiting around after a couple of weeks, and I wanted to go back in some phase of the entertainment business, so I made a quick survey of the city of San Diego, decided there was a good business there, and I purchased the Trianon Ballroom. It was then the Radcliffe Ballroom in San Diego.

Q. You say that was in August, or so, of 1944?

A. I think it was in the first part of August.

Q. All right. Then since August of 1944 have you continuously operated and managed the Trianon ballroom? A. I have.

Q. After you took it over you changed the name from Radcliffe to Trianon? A. That's right.

Q. Now, your operations there at the Trianon Ballroom, will you briefly describe them?

A. Well, the Trianon is probably the finest upstairs [582] ballroom on the Pacific Coast, 10,000 square feet,

(Testimony of Larry Finley)

with a capacity of 1500 people. We don't serve any alcoholic beverages there, and at present we are utilizing a policy of semi-name bands. We changed—we operate on the basis of six nights a week for public dancing, and Monday night, the seventh night, we have old time dancing, which has become quite an institution. Our admission prices are \$1.25 for gentlemen, 75 cents for ladies, and on Monday nights for older people there is a 50-cent charge.

Q. Now, the Trianon used, I believe you said, semi-name bands. Am I correct, sir?

A. That is correct.

Q. The area of the Trianon Ballroom is?

A. 10,000 square feet.

Q. And will accommodate how many couples?

A. Approximately 750 couples.

Q. In other words, about 1500 people can get in there?

A. That's right.

Q. Why don't you use name bands there, sir?

A. It isn't large enough. We couldn't pay for a name band, if we had it, with that limited capacity.

Q. Have you noticed whether there has been any change in the attendance there, and I am speaking numerically, in the Trianon since you had it up to this time?

A. Numerically? [583]

Q. Yes.

A. Yes, business has greatly improved. We are getting many more people than previous to the time I took it over.

Q. Well, let's use V-J-Day, which was August 14th?

A. Yes.

(Testimony of Larry Finley)

Q. Let's use that as a basis, and tell me was there any change after that, numerically, of course.

A. Since V-J-Day?

Q. Yes.

A. Yes, our business has dropped off since V-J-Day.

Q. At the Trianon? A. Yes, it has.

Q. Have you noticed the trend in population there in San Diego? A. You mean now?

Q. Yes, since you have been there.

A. Our business has dropped off at the Trianon about 5 per cent since V-J-Day, and I don't know that I have noticed that much drop-off in population since I have been there.

Q. Now, the next thing you did in the way of entertainment in the band business, after acquiring the Trianon, was what, sir? A. Mission Beach.

Q. How did you become acquainted with Mission Beach?

A. Well, being in the ballroom business in San Diego, [584] there was a great deal of comment on Mission Beach, the fact that it was coming up for lease. That's how I first heard about Mission Beach.

Q. And did you visit Mission Beach?

A. Yes, I did, one night.

Q. When was that, sir?

A. Well, at the time I visited in Mission Beach I was living in La Jolla, and I used to drive down to the Ballroom every night about 7:00 or 7:30 with an empty car, and there was an anti-aircraft station stationed between my home and the Mission Beach Amusement Center.

(Testimony of Larry Finley)

Q. That is an Army station you are talking about?

A. No, it was a Navy station.

Q. All right. Go ahead.

A. I had the habit of picking up boys there every night and taking them into town. This particular night I picked up two boys that were on their way to Mission Beach, so I decided—I had heard so much about Mission Beach, I decided I would go in with them and see just what was happening there?

Q. Did you do it? A. Yes, sir, I did.

Q. What, if anything, did you observe?

A. Well, I was in there about a half hour, and the two boys were my guests, and I spent close to \$50.00 in the half-hour I was there. [585]

Q. Did you go in the ballroom?

A. No, that evening the ballroom wasn't open. The park, however, was.

Q. All right. Now, then, did you visit Mission Beach again?

A. Yes, I was out there, oh, a half dozen times between that time and the time that I secured the lease on the property.

Q. I am interested in knowing, Mr. Finley, and I want you to tell us what you did in the way of an investigation, if any, of the Mission Beach Ballroom and the Mission Beach Park prior to making your bid.

A. Well, the first thing I did, when I made up my mind I would probably like to get the place, was to go down to the newspaper files and go through them for the last five or six years to get a picture of what was happening there. I found on going through the files that the year previous to the opening of the Square, that the

(Testimony of Larry Finley)

Ballroom had played such bands as Benny Goodman, Horace Heidt, Jan Garber, in fact, Tommy Dorsey, and all of the larger bands, which led me to believe that the operation must have been profitable or they would not have continued the policy of name bands there. I walked around the Beach area, and I rang doorbells and talked to people, to see what they thought of the Beach and the possibilities of it. [586]

Q. Did you visit Mission Beach while the Ballroom was open? A. Yes, I did.

Q. On what occasion was that, sir?

A. Well, the first night was—it was before I put my bid in to the City. The first night was in September. In fact, it was a Friday, Saturday and Sunday night, and Freddie Martin was playing at Mission Beach, and—yes, it was Freddie Martin the three nights I was out there. Freddie Martin was playing there.

Q. What did you observe there?

A. Well, I clocked—I say “clocked,” I checked the attendance at Mission Beach, and checked the attendance at Pacific Beach, where Joe Reichman was playing, and there were bigger crowds at Mission Beach with Freddie Martin than downtown, which, in my estimation, was a very fine observation. I talked to Freddie Martin that night.

Q. Don't give us your conversation, just the fact that you talked to him.

A. Yes, I talked to Freddie Martin that night.

Q. All right. Did you talk to anybody else connected with the Ballroom there?

A. Well, I talked to some of the doormen around there, and the girl at the soda fountain. They didn't

(Testimony of Larry Finley)

know who I was. I just wanted to find out what was happening there. [587]

Q. What did you do next with reference to the Mission Beach Amusement Center, and I use that all-inclusive?

A. I went down to the Civic Center, and here I guess it would be termed the City Hall. I went down one morning at a pre-council meeting and had a discussion with the mayor and the councilmen to get their thoughts on what the Mission Beach operation should be. Before I went into it any further, I didn't want to get into anything I didn't think I could handle.

Q. What did you do next?

A. Well, there was so much happening at that time.

Q. Did you do anything in the way of checking the operation of the Mission Beach Ballroom or the availability of bands, or anything like that?

A. Yes, I did. I talked to the General Amusement Company.

Q. Who did you talk with there?

A. Ralph Wonders.

Q. You talked with him. The subject, please, only?

A. The subject was I wanted to know if they would service me with bands in San Diego.

Q. That is the same Ralph Wonders who was here on the witness stand earlier in this trial?

A. Yes. I might add at this council meeting I attended in San Diego I was told—

Q. You can't give us that conversation, Mr. Finley. [588]

A. I am sorry.

Q. That is why I took you away from that. That would be hearsay.

A. All right.

(Testimony of Larry Finley)

Q. Did you talk with Mr. Ralph Wonders?

A. Yes, I did.

Q. I don't want the conversation; just the fact, and with whom did you speak at other agencies? You talked with some of them?

A. I spoke to Ralph Wonders of the General Amusement Company; I spoke with Isabel Katleman and Jack Flynn at the William Morris Agency.

Q. Concerning the same subject, sir?

A. Yes, that's right.

Q. And any one else, sir?

A. To Billy McDonald.

Q. The gentleman who also was on the witness stand here? A. Yes, and Tom Kettering.

Q. That name is new. Will you tell me who he is?

A. He is in charge, I believe, of the Frederick Brothers office on the West Coast.

Q. All right. Did you secure from them the letters which are here in evidence? A. Yes, I did.

Q. Did you speak with either Mr. Dailard or with any one [589] connected with M. C. A. concerning the same subject?

A. Yes, I did, after I received—

Q. Tell me to whom did you speak?

A. I spoke to Hal Howard and Larry Barnet.

Q. Together? A. Yes.

Q. When was that conversation?

A. I spoke to Howard on the telephone.

Q. Wait a minute. Just a moment, please. Mr. Barnet is this gentleman right directly across here with the red and black tie? That is the gentleman you spoke with? A. Yes.

(Testimony of Larry Finley)

Q. And Mr. Hal Howard is the gentleman who has heretofore been on the witness stand? A. Right.

Q. Now, you spoke with Mr. Howard on the telephone? A. Yes.

Q. Will you tell us the conversation, sir?

A. Well, I told Howard on the telephone that I was going to bid on Mission Beach and—

Q. The whole conversation?

Mr. Doherty: I think that would be hearsay, as between this gentleman and Mr. Howard.

Mr. Christensen: Mr. Howard is an officer of the Music Corporation of America. [590]

Mr. Doherty: Not an officer and not a defendant.

The Court: I don't know as his position has been elicited here in court.

Mr. Christensen: I can only tell you what my memory is on it, but I think we can agree that at the time he was in the band or the acts department of the Music Corporation of America, sir.

The Court: I think there is something in the deposition that touches it, but I don't believe there is anything in the record here.

Mr. Warne: He is the salesman of the Music Corporation of America.

The Court: I think it is proper. Overruled.

The Witness: May I have the question again? I am sorry.

(The question was read.)

The Witness: A. I told Hal Howard that I was going to put in a bid for Mission Beach, and that I couldn't get enough service out of the other agencies and wanted to know if something couldn't be done for me

(Testimony of Larry Finley)

with M. C. A. He told me at the time that inasmuch as Dailard secured M. C. A. bands for both Mission Beach and Pacific Square, that if I were to get Mission Beach he could see no reason why I wouldn't be able to get bands for the Beach. And we had quite a lengthy discussion about this, and he suggested that I come up to Los Angeles and meet with he and Larry Barnet, who was head of the [591] band-booking department.

Q. By Mr. Christensen: Did you do that, sir?

A. Yes, I did.

Q. How long after your telephone conversation with Mr. Howard was this? Was it a matter of days, or weeks, or months?

A. It was within the week, I am quite sure.

Q. All right. It was a matter of a few days?

A. That's right.

Q. Where did you see Mr. Barnet and Mr. Howard upon that occasion, sir?

A. In the offices of the Music Corporation in Beverly Hills. At that time they were located in M. C. A. Square in Beverly Hills.

Q. Was any one else present at this conversation, or any part thereof, other than you, Mr. Barnet, and Mr. Howard, sir?

A. Well, no one present at the conversation. There was always people running in and out of his office?

Q. No, I mean that actually participated or were actually present. It was just the three of you?

A. Just the three of us.

(Testimony of Larry Finley)

Q. Will you now relate to us what was said and done there, please?

A. Well, I told Barnet the same story, that I was going [592] to bid on the Beach, and judging from the past operation I figured I was going to be the successful bidder. At first he told me that I should buy into the Casino Gardens in Ocean Park, that it was a fine operation, it wasn't going too smoothly, it needed management, he thought it would be a very good deal for me, and he knew he could supply me with a lot of bands at Casino Gardens. I told him I wasn't interested in Casino Gardens, I was interested in Mission Beach. Then he told me—

Q. On that occasion was anything said about Oakland?

A. Yes. Then he told me of the great opportunities there were in Oakland.

Q. Tell me what he said.

A. Well, that there wasn't a fine ballroom up there, that the city needed a good operator and that they were routing all of their bands up there, and Oakland would be a wonderful place for me to be. I told him I was still interested in Mission Beach. He told me that I should go ahead and that he would take care of me with bands at Mission Beach if I got the lease. He said, "It might be a little tough, but I will be able to take care of you."

Q. Mr. Finley, have you related now, as well as you can recall, all of the conversation which occurred on that occasion? If not, please do it.

A. That is substantially the conversation at that first [593] meeting, Mr. Christensen.

(Testimony of Larry Finley)

Q. All right. Now, what did you do next with reference to the Mission Beach Ballroom, sir?

A. With reference to—how do you mean?

Q. Well, what did you do? Did you make your bid next, or did you see somebody about bands? That is the general subject I am trying to get at.

A. No, I made my bid. I submitted my bid.

Q. Now, the next thing after having talked with Mr. Howard and Mr. Barnet on the occasion you have told us about was to put in your bid; is that correct?

A. Yes.

Q. And the bid is the bid which has been heretofore read to the jury; is that correct, sir?

A. That is correct.

Q. You prepared that and filed that with the City Clerk of the City of San Diego? A. Yes.

Q. Now, what next occurred, sir?

A. How do you mean, what next occurred?

Q. Well, did you do anything more about it prior to the time the bid was let?

A. Oh, yes. Not with M. C. A. I was in contact with the other offices, however, by telephone; General Amusement, and William Morris, and Frederick Brothers. [594]

Q. Yes. Then the next thing of importance was the letting of the bid?

A. Yes, the day that the bid was let.

Q. What, if anything, happened in the council chambers at the time that the bid was let?

A. Well, they read the various bids, and Mr. Ames Bishop from M. C. A. was sitting in the council chambers with Mr. Dailard's attorney. I believe his name

(Testimony of Larry Finley)

was O'Connor, or O'Donnell, I don't recall, and with Mr. Eddie Wakeland, who was on the bid with Mr. Dailard. The attorney got up at the time that they read the bids and made the statement that, "We have Mr. Ames Bishop here, who is a representative of the Music Corporation of America, who would like to explain something to the council about bands." And one of the councilmen, I don't remember who it was, rose to his feet, and said, "We are not interested in hearing anything from Music Corporation of America about bands." And he promptly sat down.

Q. All right. Then the lease of the Mission Beach Amusement Center was awarded to you?

A. That's right.

Q. After that, what was the next thing you did concerning this matter, please?

A. Well, that night at the Trianon Ballroom, about 8:30, Hal Howard walked in, congratulated me, and sat down in the office and we just started to talk. [595]

Q. Just you two alone?

A. Just the two of us, yes.

Q. Go ahead, sir.

A. And Ames Bishop walked in.

Q. Yes, sir.

A. Would you like me to tell the story? Is that what you want?

Q. Yes, sir.

A. Ames Bishop walked in, and I was angry at him. I told him that I thought that he had hit a new low in lowness by coming down to appear in front of the city council to testify as to Dailard's having the exclusive on bands in San Diego. I also told him it was a rotten

(Testimony of Larry Finley)

thing in calling Ralph Wonders of General Amusement and asking Ralph Wonders to come down and appear with him. I also told him that the lowest thing of them all was in calling Jack Flynn on the telephone a week previous to this time, and telling Jack that Dailard had been awarded the lease at Mission Beach, and that Flynn should write a letter to Dailard refuting his letter to me listing the bands. I told him that I wanted nothing to do with him, and I would rather run recorded music in my ballroom than buy from him personally; if I had to buy from him personally, I wouldn't buy it.

Q. Now, they must have said something. You have told us what you stated. [596]

A. Bishop said he was sorry, he did it to protect his client, it was the best client Music Corporation of America had on the Pacific Coast, that he would have done the same for me. And I remember using a word at the time. I said that, "In my estimation, that is larceny, and I don't like to be connected with any business in which there is larceny connected. I wouldn't want anybody to do that for me."

Q. Now, heretofore we have not had very much of a description of the Amusement Center and Ballroom. Will you briefly describe them both, please?

A. Mission Beach Amusement Center is located seven miles from downtown San Diego. It is served by three bus routes, with buses on the average of one every two or three minutes from the three runs; sometimes oftener than that. It is a park built at a cost of over \$5,000,000.00, comprises twenty and a quarter acres in its entirety, has parking facilities for around six or eight hundred cars, I don't recall offhand which. It is the

(Testimony of Larry Finley)

finest strip of beach land in the San Diego area. It has a very, very fine beach. The park itself consists of the amusement zone, the ballroom, and a large plunge. This plunge since the inception, since the war in the South Pacific, has been used to teach the Navy boys how to swim, and three and a half or four months ago the person in charge of the plunge told me they taught a million and a half boys there. [597]

Q. Is there a roller-skating rink there?

A. Yes, there is a roller-skating rink, roller-coaster, Ferris wheels. There is a complete amusement section. There are nine rides, and altogether over 100 concessions, including the food places and the various games and the rides. The rides section—

Q. I noticed some kiddie rides, and things like that?

A. Yes. We have just put in a complete kiddie playground, with a kiddie Ferris wheel and a kiddie automobile thing. We are putting in things for kids right now; trains, et cetera.

Q. Now, when you were awarded the lease, it was testified here, I believe that it was effective January 3rd; is that correct?

A. That's right. January 1st, it was supposed to be.

Q. All right. What did you do with reference to the Amusement Park after you took possession?

A. Well, we completely refurnished, I should say, the entire park. We ripped out miles of worn wiring around there that was creating a fire hazard. We completely rewired and we completely repainted the entire park. We raised—we had the sanitation expert out from the Navy, and we raised all of our stands one and a half inches and

(Testimony of Larry Finley)

two inches off of the ground, so that they could be flushed daily underneath to keep the dirt out. [598]

We put in a pest control system to take care of the rats that were out there.

We completely redecorated the ballroom, repainted it, refinished the floor, and rewired it. There are 108 overhead fixtures in the ballroom, and only 32 of them were in working order. We had to rewire every one, they had been so neglected, and so run down.

Q. How about your sound system?

A. We put in a complete new sound system, not only in the ballroom, but through the entire park. We put in a new stage setting. We built a new bandstand for a smaller band on the opposite side of the regular stand that was there. We put in a liquor checking stand.

Q. What does that mean?

A. Well, if these boys would come out on the bus not knowing there was no liquor permitted in the park,—they would come out with a half or a full bottle, we would have them check it at the entrance, and on the way out they could get it back.

Q. Was there any charge for that?

A. No, no charge for the liquor checking.

We put in—in the skating rink building we put in a new floor, and completely redecorated and repainted the skating rink. We installed a milk bar for children, and put in this kiddy train I am telling you about. [599]

We went around through the park and wherever it was dark,—there were a lot of dark spots through the park,

(Testimony of Larry Finley)

and we put in lighting there to make it safe for any one to walk there.

All and all, we went over it with a fine-tooth comb, and made a nice park out of it.

Q. That is right on the beach, isn't it?

A. Yes, it is.

Q. And the ballroom overlooks the beach, does it not?

A. That is correct.

Q. By the way, the weather does affect ballroom operations, doesn't it?

A. Yes, definitely it does, Mr. Christensen?

Q. Tell us about that.

A. Well, San Diego has very nice even temperatures, but we do have our rainy days and foggy days. When we are affected by rain, any ballroom is affected by rain. Then a lot of times we have fog at the beach, when there is no fog in town, and a lot of times there is fog in town when there is no fog on the beach. For example, New Year's Eve we were hit very badly by fog. You couldn't see your hand in front of your face, and it cut our attendance way down on New Year's Eve.

Q. That was true all through San Diego?

A. Yes, it was. [600]

Q. Let's go back to New Year's Day there. You put on a "Tournament of Music" on that occasion in San Diego, didn't you?

A. That's right.

Q. That was in Balboa Park?

A. That's right.

Q. You had two orchestras there?

A. That's right. [601]

(Testimony of Larry Finley)

Q. Which two orchestras, Stan Kenton and Charlie Barnet?

A. And Charlie Barnet, Lena Horn, the King Sisters and Woody. It was so foggy you couldn't see the stand from the seats, right from the seats right in the stadium.

Q. How many days a year do you have fog at the beach there?

A. You mean days or nights, Mr. Christensen?

Q. Nights, of course.

A. There is a great deal of difference. There is usually a fog in the morning. I should say that we have a fog that would interfere with business, oh, thirty to forty nights a year. I don't think it is any more than that; in fact, I think I am overestimating that when I say that.

Q. Could you tell me the number of days per year that there is such fog in San Diego proper?

A. Well, at Lindberg Field, which is on Pacific Highway, the weather department reported—

Mr. Doherty: Just a minute. That would be the best evidence. I object on that ground.

The Court: Yes; those records are available.

Mr. Christensen: Yes, I know.

Q. From your own observation, now?

A. Foggy days in San Diego—about 90.

Q. All right.

Q. Now then, let us go back here. You had told us [602] about your meeting there with Hal Howard. When did you next see Mr. Howard or Mr. Barnet or anybody connected with M. C. A., sir?

A. Well, I came up to—I say, I went up to M. C. A.

(Testimony of Larry Finley)

Q. When was that?

A. Oh, about a week after I got the lease at the Beach?

Q. Was that on or about November the 8th?

A. It was after that time, Mr. Christensen.

Q. I mean when you got the lease?

A. Yes; on November 8th the Beach lease was awarded.

Q. Now, you have told us it was about a week after that? A. That's right.

Q. So that was along about the 15th of November?

A. Approximately the middle of November.

Q. All right. And you came up here from San Diego to the office of Music Corporation of America?

A. That is correct.

Q. And who did you see there?

A. I saw Mr. Howard and Mr. Barnet and also—

Q. Anyone else?

A. There were a lot of in and outers that day. I think, if I recall right, Lyle Thayer was in and out, and I think Mr. Bishop was in and out. I am not sure.

Q. Lyle Thayer is also— [603]

A. Vice president, I believe, of M. C. A.

Q. All right. Please tell me what was said and done on that occasion, sir?

A. Well, the first thing I did was get the Bishop situation off my chest to Mr. Barnet.

Q. Oh, no. Wait a minute. That won't help us a bit. I want you to relate what you said and what was done there.

A. Well, the same as I said before, Mr. Christensen. I told Mr. Barnet about Mr. Bishop coming down to

(Testimony of Larry Finley)

San Diego. I told him I was very much surprised that he would stoop to the lowness that he stooped to. It is the same story.

Q. Go ahead. What else was said and done, please, sir?

A. I told Mr. Barnet that now that I had the Beach, I would like to do something on the band situation; I would like to know where I would be so I could make my plans. I was in the middle of planning out the Park and refurbishing it and getting it set up the way I wanted to get it set up. And at that time he told me that—Mr. Barnet told me that they had a 10-year deal—

Q. I beg pardon?

A. Told me that they had a ten-year deal with Dailard; that it was not going to be easy to get bands for me. He told me he still was under the impression that I should have gone to Oakland instead of staying in San Diego, or that I should have taken the Casino deal. [604]

Q. Did he say anything about attorneys on that occasion?

A. No, he didn't. That was at a later meeting.

Q. I see. Go ahead.

A. He told me, though, that he was quite sure he would be able to work something out for me in the line of bands for San Diego. He said he hadn't had time; that, frankly, he didn't think I was going to get the lease; that he had been informed that Dailard was going to get it and it was quite a surprise to him when he learned that I got it. He patted me on the back and said, "Go home, my boy. Don't worry about a thing." I went home.

(Testimony of Larry Finley)

Q. By the way, your ballroom in the Park was closed until February the 3rd, I take it?

A. That is correct.

Q. That was the time you took in doing the redecorating?

A. Redecorating it.

Q. All right. Did you book any M. C. A. bands for the Trianon Ballroom?

A. I booked—are you asking did I book any M. C. A. bands?

Q. That is true.

A. I booked one M. C. A. band. It was not booked from them.

Q. Well, tell me about that.

A. Well on the occasion of my third visit to the M. C. A. [605] offices with Mr. Warner Austin—

Q. Well, all right; I had better lay a better foundation. When was that, sir?

A. I will tell you exactly. It was in the middle part of December?

Q. All right. And you say Mr. Warner Austin was with you?

A. Right.

Q. And who did you see there at M. C. A.?

A. First, we saw Hal Howard. We went into his office.

Q. Mr. Finley, you could help us if you could tell us what each one of you persons there said and did?

A. All right. We walked into Hal Howard's office, sat down, and I asked how things were coming with the band setup at Mission Beach; if he had heard anything. He said, no, he hadn't heard anything as yet but he would go in to Barnet with me.

(Testimony of Larry Finley)

At that time I was looking for a band to open at the Trianon just after New Year's Day. I told Hal that I wanted someone for the Trianon.

He said, "Larry, we have a very fine band here, very fine boys."

Q. Who said that? A. Hal Howard.

Q. Yes; go ahead. [606]

A. He said, "We have a very fine boy by the name of Paul Martin. He plays a great guitar. He has a fine band. It is a small band and an inexpensive band, and he would be a great band for the Trianon."

I told him I would like to get him.

He said, "Well, you know we can't sell you anything in San Diego. The only way you can get Paul Martin is to make a direct booking. I will give you his office number and you call him up."

I said, "Well, it is very silly. Why don't you call him up for me and make the arrangement?" I said, "Do you get the commission on this deal?"

He said, "Yes, we get a commission whether or not we book it."

I said, "Well, for the \$150.00 a week that M. C. A. is going to get for the six weeks, you can extend me the courtesy of calling him up, can't you?"

So he called Paul Martin and made the deal on the telephone to appear at the Trianon ballroom for six weeks.

After making the deal with Martin, he walked into Mr. Barnet's office with me and said, "Larry, I just made a deal—"

(Testimony of Larry Finley)

Q. "Larry," addressing Mr. Barnet?

A. Mr. Barnet. "I just made a deal with Paul Martin for the Trianon for six weeks at \$1500.00."

Q. A week? A. A week. [607]

Q. I beg your pardon. Go ahead.

A. Barnet looked up and said, "What are you going to do about the contract on it?"

Q. I beg pardon.

A. Barnet looked up and said, "What are you going to do about the contract on it?"

I said, "I don't know."

"Well," he says, "have you got an A. F. of M. form?"

Q. Mr. Barnet said?

A. Mr. Barnet said that, right. Howard said, "I imagine I can find one."

So Barnet told Howard, he said, "Now, don't make this out on an M. C. A. form because M. C. A. is not booking Paul Martin. Finley is making a direct booking."

Well, at the time—I mean I could see the way things were going, and I told Barnet that I would rather have it on an M. C. A. contract. I at least wanted to break in on the organization. So I told him that I wanted it on an M. C. A. contract.

He said, "I can't do it. If I do it, I am going to get into a lot of trouble with Dailard. You just let me handle the situation and everything is going to work all right for you."

So he instructed Howard to go out and get an A. F. of M. form, which Howard did. He brought in the contract and I [608] signed it.

(Testimony of Larry Finley)

Then I told Howard I wanted some pictures and some newspaper mats. You see, the offices supply pictures of the artists and newspaper mats for advertising purposes. And again, as Howard was on the way out the door, Mr. Barnet called him back and said, "Be sure you cut all mention of M. C. A. off of these pictures."

I remember at the time I told him, I said, "That isn't necessary. I will cut it off when it gets down to San Diego." And he said, "No. I want them cut off before they leave the office. I don't want any mention of M. C. A."

I said, "How about the newspaper mats; what are we going to do on that? That has 'M. C. A.' on it."

Mr. Barnet instructed Mr. Howard not to give me any newspaper mats unless "M. C. A." was scratched off. So I told him I was quite familiar with advertising newspaper work and that I would moisten the mat and push out the word "M. C. A." And he didn't seem to trust me on that, because I didn't take the mats with me. They were mailed to me and when I received them the mention of "M. C. A." was scratched off.

Q. You have told us all that occurred?

A. I was trying to think if there was anything else, Mr. Christensen. Well, there was more at that meeting but not in reference to Paul Martin.

Q. That was not the occasion when any conversation was had concerning any attorneys, I take it? [609]

A. No; King Sisters were at a later meeting. The attorney thing was brought up at that meeting, though.

Q. This particular thing you are telling us?

A. Yes.

(Testimony of Larry Finley)

Q. All right. Just directing your attention to that, please tell me what was said and done there about that?

A. While Mr. Howard was out cutting the word "M. C. A." off the pictures, I asked Mr. Barnet what was happening with the band situation for Mission Beach. I told him the time was getting close; that it was only six weeks off and I was really in a very bad spot; that I wanted to have a good opening and I wanted a good band.

So he told me that they had this deal with Dailard that he thought was outmoded. He told me at the time that when the contract was made with Dailard that San Diego was a very small city and at that time the city would not support two ballrooms, but now he felt it was large enough, and told me he would like to help me. And there was nothing he could do for me, however, until he took up the matter of the Dailard contract with the attorneys. And he said, "I am going to check into it with my attorneys to check the validity of it and see if we can't service you, because we want to help you." That was the time that he brought the attorneys into it.

Q. Yes. Now, what next occurred with reference to either the ballroom or—

A. Well, at that meeting I told him what [610] to tell his attorneys. I told him that he should tell the attorneys that here, in Los Angeles, there is the Trianon, the Palladium, the Casino Gardens, the Aragon; there is a dozen ballrooms here, all operating, and operating with M. C. A. bands, and certainly, in explaining the matter, that I should be given at least a 50-50 opportunity of taking all the M. C. A. bands and arranging their names in a hat, and I draw one and Mr. Dailard would draw one.

(Testimony of Larry Finley)

He said that he would check with the attorneys to see what could be done.

Q. You mentioned the Aragon ballroom. That is a ballroom down there at Ocean Park?

A. Yes, it is.

Q. Just one block from the Casino?

A. One block from Casino Gardens; that is correct; and both running M. C. A. bands.

Q. What was the next thing that you did with reference to the ballroom or with M. C. A.?

A. Well, I came up to Los Angeles; I believe it was the early part of January, and came in to see Mr. Barnet. Mr. Howard—I remember very definitely, at this meeting Mr. Thayer was present for quite a bit of the time.

I had better start myself at the beginning of the meeting if I am to give you the continuity on it.

We walked into Hal Howard's office, which was in a different office than Mr. Barnet's. Mr. Howard was then located in what was the audition room in the M. C. A. Building, and his desk was about 15 feet from Ken Later's. Howard was an orchestra—

Q. May I interrupt you? That is the Ken Later whose deposition has been read here?

A. That is right. Mr. Barnet was, I believe, at the barber shop and was delayed. So I sat there and talked to Mr. Howard for a while. During the conversation he introduced me to Ken Later and told Ken Later I was interested in two things from his department: one was the booking of outdoor attractions, such as an aerial attraction, and trapeze artists and people who jump off 100-foot poles into a bucket of water and things of that sort.

(Testimony of Larry Finley)

He also told him that it didn't look any too good for me so far as getting bands were concerned from M. C. A. and that none of the other agencies had any bands in California that they could serve me with.

And I told him that probably the only thing that I could do to get by would be to run a local or a semi-name band and throw an attraction in with it. I asked him what type of attractions M. C. A. had that they could offer me.

Well, on the free outdoor attractions, he advised me that he would let me know; that he would have to check into the bookings; that he didn't have any listings on it, but he [612] took out a list from his desk and I went over it with him and I selected—oh, a dozen or fifteen people that I wanted him to check on to see if they would be available for Mission Beach.

There was Frankie Sinatra, I remember, that we had; there was Lily Pons, and Andre Castellanas; Laurel & Hardy. I believe there was Bily Gilbert, Bonita Granville, of course, the King Sisters. Who else, offhand, I don't recall all of the people that I told him I was interested in. So he went over the list with me and said that he would see me before I left the building and get back to me as far as telling me what the prices were and everything.

Just about that time Mr. Barnet came in, and Mr. Billy McDonald was present with me at that meeting. Billy McDonald, myself, Mr. Howard, and Mr. Later walked into Mr. Barnet's office, and Later told Barnet what I was interested in; said he was going to do some checking on it; that he couldn't let me go until he saw me on the thing.

(Testimony of Larry Finley)

Q. That is to say, Mr. Barnet should not let you go until after Mr. Later had checked it?

A. That is right; that I was interested in attractions.

Q. All right; go ahead.

A. At that time, Lyle Thayer either walked in or was called in—I don't recall—and sat down. And I told Thayer what my idea was. I told him that I knew I couldn't get bands and it didn't look as though I was going to get any; [613] that I thought the policy of running attractions would be the thing. He advised me that I was wrong about attractions, and he was 100 per cent right. He told me it would not pay off. People go to a ballroom, they want to dance. He said he didn't think the attraction policy was the proper policy for it.

Well, Mr. Thayer left the office, Mr. Howard left, I believe, too. It left Mr. McDonald and Mr. Barnet and myself.

I asked Barnet if he had heard from the attorneys. I was getting anxious to know. And he said, no, he hadn't. He hadn't heard anything. He says, "It is a little too early." I didn't give him enough time.

So I explained to him that I didn't have much time. I had to have something. I still did not have a band booked for my opening weekend. I did, however, have an attraction booked for the opening weekend, but not a band.

Q. What attraction is that?

A. They are Ella Mae Morris and Allan Jones. But people can't dance in a ballroom to two singers and I needed a band pretty badly.

So I told Mr. Barnet that I was in an awful spot. I had to have something. So he turned around to his file

(Testimony of Larry Finley)

and he pulled out a list of names of bands from his file. And he said, "Well, let's see what is here." He appeared to go down the file and, as he did, I got up and walked around his [614] back to look over his shoulder and look at a list of the names. And I remember Jan Garber's name to be on the list. I said, "How about Garber? I understand he is in town."

He said, "No. He is going to play the Square."

"How about Harry James?"

"Well, he is going to play the Square."

I says, "What is this thing? Are they all going to play the Square a month, six months, or a year off?"

He said, "Well, that might be, but they are going to play the Square."

Well, then the thing hit me that I was really in bad condition. So he couldn't do anything for me. I still had a little—I just had a hunch that maybe I would be able to get together with him, so we went out to lunch.

Q. That is to say, you and Mr. Barnet, and who else was there?

A. Well, there was McDonald, Barnet, myself, Howard or—yes, I believe it was Hal Howard. We went to lunch that day. We went to the Copper Kettle.

Q. That is a little restaurant—

A. We sat there talking. That is right. While we were talking there Mr. Barnet told me—I asked Barnet about Harry Owens, because Harry Owens had done a very fine job at Mission Beach, got a few locals in it, got a percentage and got a lot of money there, and people liked him.

(Testimony of Larry Finley)

Q. When did Harry Owens play there? [615]

A. He played two days before I took the place over, New Year's—a week long he played.

Q. I see. Go ahead.

A. I asked Barnet if he could get me Harry Owens. He said he couldn't make a booking for me on it but I could book him direct; that he would give me Harry Owens' phone number at home, which he did. He was very nice to me. He gave me the number. I called up Mr. Owens and Owens told me—

Q. You can't give the conversation.

A. I beg pardon. I am sorry.

Q. So you did not get him?

A. I did not get him.

Q. All right.

A. On the way over to the Copper Kettle we were talking about various bands, and Mr. Barnet told me that I could make these direct bookings with the bands. I asked him how I could make a direct booking, and he said, "Well, you have to go to where that band is."

I said, "Right now Tommy Dorsey is in New York. Would I have to go to New York to direct book Tommy Dorsey?"

He said, "Yes."

I said, "Where is"—I forget—"Bobby Sherwood?"

Anyway, I would have had to have gone all over the world to make my direct bookings of these bands. I knew Jan Garber was in Los Angeles. I asked him about Garber. He said, [616] yes, sure I would have to go over there to Garber and make my direct booking; that he had just played the Square and he couldn't book him for me, but I could go and talk with Garber myself.

(Testimony of Larry Finley)

Just as we had completed our lunch at the Copper Kettle and were on our way out of the restaurant, who in the world but Jan Garber was coming in? I told him I am going over and speak to him and book him right now. He says, "No, don't do it." He said, "You will spoil everything if you do."

I said, "Well, why?" I remember him telling me that he had a special reason for not wanting me to book Garber. We got back to the office and Ken Later came in. He said that he could get me the King Sisters and Bonita Granville for \$2500.00 for the weekend of February 10th and 11th, which was my second weekend. I told him that \$2500.00 was a little high; that I didn't want to spend that much money. I didn't want to chisel any prices with him; that we were on the job for Bonita Granville and the King Sisters, but we thought they would be a good bet at \$1500.00.

Mr. McDonald, who was with me at the time, asked me if \$1500.00 for two days was a lot of money for the King Sisters. I told him I thought it was but we wanted them because I thought they would mean something down there and they hadn't played in San Diego since they became an attraction on their own. [617]

So we talked a while and he said that he would call and contact King Sisters to see if they wanted to play the date; that they had to accept the date first, and if they wanted to accept, if it was O.K. with me and it was O.K. with them.

I said, "You call the King Sisters and tell them that I wanted them. We will make it nice for them down there. You send me the contracts and I will sign them." And Later walked out of the office. That is substantially

(Testimony of Larry Finley)

all of the conversation, as much as I remember. You see, that is over a year ago, Mr. Christensen.

Q. When did you find that you were not going to get the King Sisters?

A. I didn't find out for a while. I called Later the next day and he told me they had contacted one of the King Sisters and they had accepted the booking and the contracts would be in the mail. I waited a day, the contracts were not in the mail, and called up Later, again. I said, "Where are the contracts?"

He said, "Larry, they should be in the mail. I don't understand it. They are tied up between our legal department and our auditing department or something like that." This went on for three or four days and no contract. [618]

The next thing I knew is after I had instructed my art department to make out some layouts on the King Sisters coming the second week-end, I picked up a newspaper and I read where they were booked into Pacific Square one week previous to the time that I had booked them. That is, they booked them just one week prior to the time I had O.K.ed, and he had O.K.ed it verbally.

Q. Now, let's go back for a minute. You had the Henry Busse band for your opening?

A. That's right.

Q. Tell me, how did you do that?

A. Well, General Amusement had no name bands in the Los Angeles or San Diego area. Frederick Brothers had no name bands—period. Music Corporation, of course. I called Jack Flynn at the William Morris Agency, and I explained to him the spot I was in for a band for the opening, and he told me that the only

(Testimony of Larry Finley)

possibility that there might be would be to get Henry Busse; he didn't think—he thought that was a very remote possibility, because Busse had this terrible skin condition at the time, and the doctor told him he had to take a vacation. I told Flynn that for the opening I didn't care what the price was, that I had to have a band, that I was putting everything I had into the Beach deal, both financially, and morally, and physically, and everything, and I said, "The thing has got to be a success. You have to get [619] Busse for me." He called me back—

Q. You then made direct negotiations, did you, or did Mr. McDonald, or somebody else?

A. No. It was a funny story. Mr. Flynn didn't seem to do all he might have in booking the band. Of course, at that time Vaughn Monroe, another William Morris band, was at the Square that week-end. But Ralph Wonders, whom I particularly got friendly with, he was in Frisco at the Palace Hotel where Busse was playing, and he talked to Busse and induced him to play the date. Of course, I had to pay a terrific fee to get him.

Q. What do you mean by that?

A. I paid him \$2,750.00 for a two-day engagement. That Mr. Busse told me was the greatest—

Mr. Doherty: Just a minute.

Mr. Christensen: That, of course, would be hearsay. As a matter of fact, Mr. Doherty has been very generous.

(Testimony of Larry Finley)

Q. By Mr. Christensen: Now, he played there for two days, and who followed then?

A. I was just running week-ends at the time, Mr. Christensen. I embarked upon a policy of Saturday and Sunday engagements until the middle of May, when we went on a six-night-a-week basis until Labor Day, and then back to two-night-a-week engagements.

Q. Now, from the time that you spoke there with Mr. [620] Barnet on the occasion you have told us about at the M. C. A. office, when did you next see anybody from M. C. A.

A. See or talk to any one, Mr. Christensen?

Q. Well, did you talk to them? I don't mean just passing, of course, sir.

A. I was at the office of Reg Marshall one afternoon, and I called Mr. Barnet on the phone. I mean, I had gone around to every agent to see what was available. I called Mr. Barnet on the phone and I asked him—I still had a little bit of hope that maybe a talk to his attorneys would help, and so I asked him on the phone if he had talked to his attorneys, and he said, "No."

I told him, "Larry, we have been messing around with this thing for five or six months. If I can't get any satisfaction out of you on an amenable basis, I am going to see my attorney to see if you can't be forced to give me bands.

Mr. Doherty: Would you fix the dates, please?

Q. By Mr. Christensen: You told us about the telephone call, the fact that it was over the phone, but you haven't told us when it occurred, sir.

A. It was in February. I am sorry, but I can't give you the exact day.

(Testimony of Larry Finley)

Q. Of 1945?

A. That's right.

Q. What next occurred with reference to this matter? [621]

A. Mr. Barnet told me that I was crazy, I would never do anything like that.

Q. That is a part of this same telephone conversation?

A. Yes.

Q. I am sorry. Tell me all the conversation, sir?

A. I didn't know you wanted me to. I am sorry.

He said, "You are insane if you do anything like that. That is going to get you nowheres."

I asked him how I was going to get bands. He said, "All I can tell you is that if you see your attorney, it won't get you nowheres."

I told him I was going to sue him under the provisions of the Sherman Anti-Trust Act, and he said, "You can't do any such thing." And the argument became a little heated on it, and I shut off, and I went down to see my attorney. I explained the thing to my attorney. I said, "There must be a law to see"—

Q. In other words, you discussed the matter with Mr. Arthur Desser, I believe?

A. That's right.

Q. After that what next happened?

A. Mr. Desser notified Mr. Joe Ross—well, he was one of the attorneys representing M. C. A., and they being in the same building, that is, Desser, Rau & Christensen and Pacht, Pelton, Warne, Ross & Bernhard being in the same [622] building. Mr. Desser told me he knew Joe Ross,—

(Testimony of Larry Finley)

Q. All right, he told you he knew him. After that don't give any more of that conversation.

A. All right.

Q. What did you do next?

A. We went—I went to see Mr. Ross with Mr. Dessser.

Q. Was anybody else present besides you, Mr. Dessser, and Mr. Ross?

A. No, that's all.

Q. Please tell us what occurred there.

A. Well, I told Mr. Ross of the running around I had been getting at M. C. A. I told him the incident of the King Sisters booking.

"Larry," he said, "that is hard to believe."

I said, "Well, it actually happened."

He said, "I am going to check it." and he says, "By gosh, if it is true, I am going to do something for you. I will see that something is done."

He told me that Ames Bishop and Wayne Dailard were very, very close friends. He said he didn't know if there was a tie-up there or not. He said, "However, I am very sympathetic to you in your problem down there, and I am going to intercede in the matter. I don't believe you will have to take it into court. I will intercede in the matter and see if we can't get you some bands." And he told me he would contact [623] my attorney.

Q. That is to say, he would call Mr. Dessser?

A. That is correct.

Q. Well, did you later talk with Mr. Ross?

A. I talked to him in New York after we had filed the action. He never called Mr. Dessser back. I under-

(Testimony of Larry Finley)

stand from Mr. Desser, however, that Mr. Desser called him.

Q. Well, you can't give us that. Did you talk again with anybody from M. C. A. before filing the action?

A. Yes, I received a telephone call from Hal Howard or Ames Bishop, I don't remember which, I think it was Hal Howard, offering me Jack Teagarden and his orchestra at a price of \$2,250.00 against 50 per cent.

Q. Could you tell me when that occurred, sir?

A. About three days after I talked with Mr. Ross.

Q. I see.

A. They offered me three bands, Mr. Christensen. I don't recall if it was a telephone conversation or a letter, but I know they offered me Jack Teagarden and his orchestra at a price of \$2,250.00 against 50 per cent; Bob Chester at, I think it was, \$2,250.00 against 50 per cent; and Ted FioRito at \$2,500.00 against 50 per cent.

Q. What did you tell them?

A. Well, I told—yes, it was a telephone conversation. I remember now. I remember discussing it now with [624] Mr. Howard, because I told Mr. Howard that both Jack Teagarden and Ames Bishop—correction. I am sorry—both Jack Teagarden and Bob Chester had played together, both bands, at Pacific Square three or four days before this conversation, and in the music business we call it a "turkey," it was a very, very bad engagement. We did fairly well that week-end out at the Beach because a lot of the kids left the Square and came out to our place. Both bands were not good, and I couldn't see running a half of what was an attraction at the Square. In other words, I wouldn't run Jack Teagarden alone

(Testimony of Larry Finley)

if the week before Teagarden and Chester both were at the Square.

On the Ted FioRito thing, I told him I was very much interested in FioRito, but I wouldn't want to be held up on the price of it. In other words, they quoted me the same price for two days at Mission Beach as they had been quoting for three days at Pacific Square. Pacific Square ran three nights, Friday, Saturday and Sunday, and we were running only two nights, and I told him if he would adjust the price and charge me for two nights, I would book Ted FioRito. In fact, I told him I would be glad to have him, but I wouldn't play the sucker and pay him the same for two nights as my competitor paid him for playing three nights.

Q. What did he say?

A. He said it couldn't be done, that it was the same [625] price for a two or three-night engagement. I told him I couldn't see it that way.

Q. Now, how many name bands did you have at Mission Beach during the year 1945?

Mr. Doherty: Just a minute. That would be a conclusion unless the witness qualifies himself as to what he defines it to be.

Mr. Christensen: I think you are perfectly right, Mr. Doherty. I withdraw the question.

Mr. Doherty: I think we ought to have the additional definition, your Honor.

Mr. Christensen: Will you now, please, tell me if you know what a name band is?

A. A name band is a group of musicians who have achieved national popularity through the use of radio, or records, or motion pictures, or transcriptions; a band that

(Testimony of Larry Finley)

is known equally in all parts of the country, and mainly a band whose popularity—

Q. You don't mean equally, do you, Mr. Finley?

Mr. Doherty: Let the witness testify a little bit.

Q. By Mr. Christensen: Go ahead.

A. I am sorry. I was interrupted by Mr. Christensen, and will you read the last part?

(The answer was read.)

A. I would leave the word "equal" in there. And mainly [626] a band whose popularity has the assurance of good business or extra business at a box office in a ballroom—a band that the kids—not necessarily kids—that people like to dance to and would pay money to listen to them and dance to them. That is my definition of a name band.

Q. How many bands, then, did you have at Mission Beach during the year 1945?

A. Seven. Seven or eight; I think seven.

Q. Can you remember what bands they were?

A. Yes. There was Henry Busse that played February 3rd and 4th. Frankie Carle played a four-week engagement starting May 11th; that is four weeks at six nights per week. Tony Pastor came immediately after Franke Carle; four weeks at six nights per week. Tommy Dorsey, two weeks of six nights per week. Jimmy Dorsey, two weeks of six nights per week. Glen Gray, four weeks on six nights per week. Charlie Barnet, four nights, December 28th, 29th, 30th and 31st. Stan Kenton, one night, December 31st; that was New Year's Eve.

(Testimony of Larry Finley)

Q. You used both Stan Kenton and Charlie Barnet in your Tournament of Music?

A. Yes. I booked the two of them for the Tournament of Music with the provision they would play that night out at Mission Beach.

Q. I see. I notice some of those engagements were [627] for four weeks. Is that the policy of booking them, for four weeks, sir?

A. That depends, Mr. Christensen, a great deal upon your locale, and what your competition may be. I had a band in there every night for 24 nights straight, while my competition was changing bands every week or every two weeks. My opinion would be for engagements of no more than two weeks in the summertime. That is what my competition did. They would run a band for one week-end or two week-ends. At the time the policy I had was not the policy I wanted. It was the policy I had to have because I couldn't get the bands to cut it down to two weeks.

Q. What did you do about bands other than those you have named to us? I mean, besides the names bands you have mentioned, what did you do?

A. Well, I have used organized semi-name bands. I came up to Los Angeles and got a leader and got a band together for him so that he would be able to fill the time for me. I have used local bands down there. With the exception of the names bands I have mentioned, and three or four others of semi-name bands we have had very poor music down there. It hasn't been good.

Q. All right. Now, you had these name bands. How did you get them? Let's start with, say, Tommy Dorsey. How did you arrange to get him? [628]

(Testimony of Larry Finley)

A. Tommy Dorsey was a fluke booking. It was—I would rather start with Jimmy Dorsey, if I may, because it goes back. Tommy goes back to Jimmy.

Q. All right.

A. I went back to New York to the General Amusement office and arranged to book Jimmy Dorsey as what I thought would be the top name band of the year, and send him in for a two-week period of time. I went back to New York, oh, I think it was a month after the Jimmy Dorsey booking, and I called a few people I knew, friends of mine in the business. I had not known Tommy Dorsey, I never knew the man, and I asked them if they could please—

Mr. Doherty: Just a minute. That is objected to as hearsay, and incompetent, irrelevant and immaterial.

Mr. Christensen: You are perfectly right, Mr. Doherty.

Q. By Mr. Christensen: You inquired there concerning Mr. Dorsey, Tommy Dorsey, is that right?

A. I inquired about Mr. Dorsey and a meeting was arranged with Mr. Michaud, who is Mr. Dorsey's personal manager, and Mr. Lee Eastman, who is Mr. Dorsey's attorney. They knew I had Jimmy booked, and I asked them about booking Tommy for a two weeks engagement.

Q. All right. Now, stop with your conversation except for the fact you arranged to book Tommy Dorsey. Is that right?

A. That is correct. [629]

Q. Who prepared the contract, sir?

A. The M. C. A. office in Los Angeles prepared it, although it wasn't booked through them, Mr. Christensen.

(Testimony of Larry Finley)

Q. Did you talk with anybody connected with M. C. A. concerning this booking and drawing the contract?

A. Yes. The first I heard from any one at M. C. A. was, I think, Ames Bishop called me at the hotel.

Q. When was that, sir? A. In May.

Q. At what hotel?

A. I was staying at the Beverly Wilshire at the time.

Q. All right.

A. Ames Bishop called me on the phone and said, "I have the Tommy Dorsey contracts ready for you to sign, Larry."

I said, "Why isn't it made out on an A. F. of M. form. I booked Dorsey direct. It is a parallel case to Paul Martin."

He said, "This is the way the contract has to be." I said, "All right, bring the contract over." I waited, and I missed him. However, later he called at the hotel, or, I forget, I either came back or I went to the M. C. A. office to sign the contract, the Tommy Dorsey contract.

Q. Now, you played him at Mission Beach. What was the result?

A. Very good. I played Tommy for two weeks, which was [630] just the right time for him. He went in at what he told me was the highest figure he ever got, a guarantee of \$10,000 a week against 55 per cent.

Q. You mean you pay an orchestra leader 55 per cent?

A. I pay the orchestra 55 per cent.

Q. Go ahead.

A. The first week he was there—

The Court: Explain that so that the jury will understand it. They may not be familiar with these technical terms.

(Testimony of Larry Finley)

The Witness: I am sorry, your Honor. We guarantee in some cases to an orchestra a flat sum of money against a percentage. In other words, we may guarantee an orchestra \$3,000.00 against 60 per cent, and if we do \$10,000.00 worth of business in the time they are there, the 60 per cent amounts to \$6,000.00, and so they get the \$6,000.00 instead of \$3,000.00.

Q. By Mr. Christensen: In other words, it is a minimum guarantee?

A. A minimum guarantee of \$10,000.00 per week against 55 per cent, which means that if 55 per cent of our total business is greater than \$10,000.00, then he would receive the greater amount. If he came in and he did \$2,000.00 worth of business for the entire week, we would still have to pay him \$10,000.00, however.

Q. But you say that was quite profitable? [631]

A. Yes, it was. He went in at a lower percentage. We made it 55 per cent, which was 5 per cent lower than when he played there before at Pacific Square. His usual percentage was 60 per cent.

Q. Now, with reference to these other name bands, how did you do with them?

A. I did very well with Jimmy Dorsey. He also went in at a percentage of 55 per cent. He was there for two weeks. His price was \$7,500.00 a week against 55 per cent. Of course, you understand the reason for the 5 per cent less, Mr. Christensen, was the fact, they were my partners in another enterprise. Jimmy Dorsey did very well there in his two-week engagement.

Q. All right. Now, how about the other name bands that you played?

(Testimony of Larry Finley)

A. Well, Frankie Carle lost money on us. He was there too long, for four weeks. We had a couple of weeks we did fairly well. We had fair opening weeks on them, and the last two weeks were very bad.

With Tony Pastor we did good business the first couple of weeks, and then it fell off. The same with Glen Gray. Four weeks was just too long to run a man.

Q. What attractions were being played against you down there at Pacific Square during those times?

A. Well, top name bands, changed weekly and every two [632] weeks.

Q. Now, you have told us about going back to New York.

The Court: Mr. Christensen, I think we will suspend now.

Mr. Christensen: Very well. I will withdraw what I started.

The Court: We find that we have matters that will occupy us this afternoon, so we will not have any session in this case this afternoon, but we will have a session tomorrow, and during all of the usual hours tomorrow. On Wednesday it will be necessary to empanel a new Grand Jury, so that probably we will not convene on Wednesday morning until about 10:30, the same as we did this morning.

Ladies and gentlemen, we will take a recess until 10:00 o'clock tomorrow morning. Remember the admonition in the meantime, and keep its terms inviolate. Be here in the morning at 10:00 o'clock.

(Whereupon, at 12:10 o'clock p. m., Monday, February 4, 1946, an adjournment was taken until 10:00 o'clock a. m., Tuesday, February 5, 1946.) [633]

Los Angeles, California, Tuesday, February 5, 1946.
10:00 a. m.

The Court: All present. Proceed.

LARRY FINLEY,

called as a witness in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

Mr. Warne: If the Court please, at 11:00 Mr. Stein has to leave to attend a funeral, so that will explain his absence.

By Mr. Christensen:

Q. Mr. Finley, you have invited my attention to page 608 of the transcript, which has to do with the conversation concerning the booking of the Paul Martin band—I beg your pardon—of the King Sisters, and in that you said that “Barnet looked up,” reading from line 5, “and said, ‘What are you going to do about the contract on it?’ ” And you replied, “I said, ‘I don’t know.’ ” Is that correct, sir?

A. I don’t believe it is, Mr. Christensen.

Q. What actually happened there?

A. It might have been Mr. Howard said that he didn’t know. I believe that is the way I told it.

Q. Is that the fact?

A. Yes, I would say it is.

Q. At the time that we took the afternoon recess, I had just asked you concerning the trips to New York for the purpose [635] of booking bands.

A. Yes.

(Testimony of Larry Finley)

Q. You did go to New York for that purpose, did you, sir.

A. Yes, I made several trips to New York for the purpose of booking bands.

Q. And the first time, sir?

A. The first time was the time that I booked Jimmy Dorsey.

Q. Can you fix the dates for us, please?

A. It was during the middle part of March.

Q. Of the year 1945? A. Right.

Q. What did you do?

A. I talked to Jimmy Dorsey and his personal manager, and arranged to have them appear at Mission Beach.

Q. Did that entail any expense on your part, the trip?

A. Yes, it did. There was quite a bit of expense attached to it.

Q. Could you tell me approximately?

A. Oh, in the neighborhood of \$1500.00, I would say.

Q. Then did you make a subsequent trip, or, you have already told me that you did. When was your next trip to New York, that is to say, for booking bands direct?

A. The next trip I made was possibly 30 or 45 days later. [636] I don't recall exactly when I went back. It was for the purpose of booking Tommy Dorsey.

Q. That would be, then, in April or the early part of May?

A. It was. I recall now, Mr. Christensen. It was just prior to the time I entered into the partnership with the Dorseys, so it was the latter part of April and the first part of May that I made the trips for booking the Dorseys.

(Testimony of Larry Finley)

Q. Tell me what was done on that occasion, sir; what you did, of course.

A. I had a mutual friend arrange a meeting with Mr. Dorsey's personal manager, Arthur Michaud.

Q. That is Tommy Dorsey, is it?

A. That's right. And I met with Mr. Michaud and Mr. Dorsey's attorney, Mr. Eastman, and arranged for the booking at Mission Beach. That was the time that they asked me if I wouldn't be interested in taking over the Casino Gardens, incidentally.

Q. Now, that, too, entailed some expense on your part, did it?

A. Yes, there was quite a bit of expense attached to that. That was \$2,000.00. I recall it.

Q. Now, the next trip you made?

A. The next trip I made was, I think it was, the time that I made a direct booking with Charlie Barnet. [637]

Q. When was that, sir?

A. I don't recall the date, Mr. Christensen.

Q. Your best memory of it, sir?

A. Well, it might have been in July or August.

Q. In any event, after the Tommy Dorsey booking?

A. That's right.

Q. I use the words, "Tommy Dorsey." Is that right? Did you book both Tommy and Jimmy at that time?

A. Yes, that is right. On the Barnet booking I went back for a twofold purpose. We couldn't get together on the dates that—or, the terms that he was to play at the Casino Gardens here. You see, I asked M. C. A. to supply him for the Casino Gardens, and there was some difficulty; I don't recall exactly if it was because of the radio wire trouble that Barnet was afraid of, or if it was

(Testimony of Larry Finley)

for the fact that we couldn't get together on the finances, but we needed Barnet's band to open at a certain date, and M. C. A.'s office advised me that they were contacting him and going back and forth with Barnet, and at the same time nothing was happening, and I wanted to talk to him about playing at Mission Beach.

Q. Now, you said about your contact there with the M. C. A. office concerning this matter, and they are entitled to a little better foundation than just that. So tell me with whom you spoke, and when it was, approximately.

A. My dealings on Charlie Barnet for the Casino Gardens were with Hal Howard. [638]

Q. And the date, please?

A. I am trying to recall, Mr. Christensen. I do not recall the date. Let's see; Glen Gray followed Jimmy Dorsey, and Charlie Barnet opened right after Glen Gray. I think that was—I think it was in October. I believe I talked to him in New York in September.

Q. That, too entailed some expense on your part?

A. Yes.

Mr. Doherty: May it be understood, your Honor, in all the testimony of this witness or other witnesses—or this particular witness, because we only have him before us, in the matter of any expenses or monies or damages subsequent to the filing of the suit is incompetent, irrelevant and immaterial, without the issues of the case, and not a basis of damages, and speculative and guesswork.

The Court: May it be so understood, and the objection is overruled, subject to modifying the ruling later on if deemed proper.

(Testimony of Larry Finley)

Mr. Christensen: You had answered that question, had you, sir?

The Witness: I am sorry. My mind was taken off the trend of the talk. May I have the question? Can we go back a little bit?

(Question and answer read by the reporter.)

Q. By Mr. Christensen: Could you tell me approximately? [639]

A. Well, it costs a lot of money to entertain band leaders when you are talking to them about playing at Mission Beach, especially an M. C. A. band. I would say, offhand, in the neighborhood of \$2,000 for the job.

Q. Mr. Finley, why didn't you book more M. C. A. bands direct?

Mr. Doherty: Just a minute. That calls for his conclusion and argumentative, why he did not.

The Court: Overruled.

A. Frankly, I could not afford it, Mr. Christensen. My bank account was going down and it is too expensive a proposition to go out and book a band for one or two weekends, an expense of \$2,000 every time you want to book them, and it just wasn't good business to do it.

Q. Tell me why didn't you get bands from General Amusement Corporation then?

A. Well, they did not have them to serve me with.

Q. Why didn't you get them from one of the other agencies, then, such as William Morris or the Frederick Bros.?

A. I exhausted every agency for name bands and there were just none out here on the Coast at that particular time, or all the bands on the Coast were M. C. A. bands.

(Testimony of Larry Finley)

There were none here from William Morris, General Amusement or Frederick Bros.

Mr. Doherty: Will you please have the witness specify [640] what period that was?

Mr. Christensen: Yes.

Q. Please, Mr. Finley, will you tell me what period you were talking about there?

A. Well, you see—may I explain the situation, your Honor?

Mr. Doherty: Answer the question.

Mr. Christensen: Just tell me the period you are talking about.

A. The period was from September until January.

Q. Of what year?

A. Of 1945, and other months throughout the year.

The Court: Well, that is not specific.

Mr. Christensen: That does not help.

The Court: You made it specific first and then you made it general.

A. I am sorry. From September until January.

Q. By Mr. Christensen: You have already told us about going back as early as March of 1945.

A. Well, at that time, from the first week in January until May 11th, the time that I had Frankie Carl at Mission Beach, there were no bands available for me.

Q. Do you mean from—

A. G. A. C. or William Morris. Then, from Labor Day until the first of January of 1945 there were no name bands avail- [641] able for me. Then, for a two-week period in—I believe it was July, there were no bands available from any other agency.

(Testimony of Larry Finley)

Q. You mean except from M. C. A.?

A. That is right.

Q. You told us yesterday about your difficulty in getting a name band for your opening. Will you tell me why you did not get one from G. A. C.? That would be in February of 1945, sir?

A. General Amusement had no one out here. The first band, as I told you, was Frankie Carl, who was available in May.

Q. So that, is this correct, then: Except for your opening, when you used Henry Busse, you had no name band until May of 1945, when you had then Frankie Carl?

A. Right; until May 11th.

Q. Mr. Finley, did that have any effect upon the successful operation of the Mission Beach ballroom?

Mr. Doherty: Just a minute. I object on the ground it is incompetent, irrelevant and immaterial, hearsay, a conclusion of the witness, not a proper basis for expert testimony or opinion evidence.

The Court: Well, I think the way it is phrased it is objectionable. It does not give the jury any factual basis.

Mr. Christensen: I will withdraw the question. [642]

The Court: Sustained.

Q. By Mr. Christensen: Mr. Finley, you have told us there of the difficulty in obtaining bands?

A. Yes, sir.

Q. You have told us that you finally did get Henry Busse for the opening; and he played for a period of how long, sir?

A. Two days.

Q. Two days. And that thereafter you did not have any name bands play at Mission Beach ballroom until May the 11th, 1945?

A. That is correct.

(Testimony of Larry Finley)

Q. During which period of time you used what bands?

A. Well, I used some semi-name bands that played at Mission Beach for the weekend, the two-day weekend, before going into the Trianon downtown. Other than that, I would book into the Trianon for four weeks and would play the two-day engagement at Mission Beach to fill me over. I used one particular band, Wingy Ma-none, a trumpet player that didn't even have a band. He got a group of musicians together up here and he would come down and play. I got whatever music I was able to, Mr. Christensen, and most of it was not good.

Q. Then, did the fact that you had such bands, in your opinion, have any effect upon Mission Beach ball-room as [643] a ballroom, as a Class A ballroom?

Mr. Doherty: Just a minute. The same objection, your Honor; on the further ground that no foundation laid, and speculative, guesswork, not the basis of any element of damages.

The Court: That is the same question. He ought to be able to give specific factual data rather than his opinion.

Mr. Christensen: All right.

Q. Can you tell us specifically what, if any, effect that had upon the successful operation of Misison Beach ball-room?

A. Well, perhaps the best example that I can give you specifically is the profit and loss sheet, Mr. Christensen, for a Class A ballroom the same as Pacific Square, that were running name bands; and we went from bad to worse along with the bad music that we had. Dancing being a habit, people get in the habit of going places, and they

(Testimony of Larry Finley)

certainly did not make a habit out of coming to the Beach with the type of music that we presented.

Mr. Doherty: I move the answer be stricken as not complying with the court's admonition to give a specific instance, a conclusion of the witness and argumentative.

The Court: The latter portion of the answer, ladies and gentlemen, will be stricken. The first of it will stand, the comparison between the two ballrooms; but the opinion with [644] respect to what probably would happen will go out and be disregarded.

Q. By Mr. Christensen: Have you through the operation of your Trianon ballroom and the Casino Gardens had an opportunity to observe if, generally speaking, it is the same persons who come regularly to a ballroom?

A. Yes, it is. I can give you specific instances of that if you would like.

Q. Well, perhaps it would be illuminating.

A. Well, here at the Casino Gardens, Mr. Cohen, who was acting as resident manager, pointed out people to me and introduced me to people that had been coming every Saturday night for the past 15 or 16 years. The same condition holds true at the Trianon. The man that I bought it from, Mr. Ratliff, would come up some evenings and introduce me to people that had been coming up the same nights for a great many years, as many as 20 years. And they all seemed to get the habit of going to a certain place on a certain night. And I have observed it in both places.

Q. I do not believe you have told us as to the capacity of Mission Beach ballroom, sir.

A. Mission Beach ballroom consists of 32,000 square feet. It is a Class A structure that can accommodate as

(Testimony of Larry Finley)

many as 6,500 or 7,000 people. Now, that does not mean 6,500 or 7,000 admissions to the boxoffice. It means much more than [645] that; for example, that is in a ballroom that is located in the center of an amusement park and there is a pass out system. When people come in we stamp their hand, and that entitles them to go in and out at will; and there are always as many people going out and visiting the park, buying their hot dogs and soft drinks, and playing the games and riding the rides as there are coming into the door. So it is pretty hard to state as to how many people—what the capacity is, Mr. Christensen, except I might tell you that the Amphibious Training Base at Coronado, that is the Naval station there, advised me that one night—

Mr. Doherty: Just a minute.

Mr. Christensen: That would be hearsay.

The Witness: I am sorry, sir.

Mr. Christensen: You will have to testify to your own observations, your own knowledge, sir.

A. Over 8,000 people have been in the ballroom in one night.

Q. Do you know the number of name bands, M. C. A. name bands, that were available here in San Diego area during the year 1945, available for playing here in the San Diego area during the year 1945?

The Court: That calls for a yes or no answer.

Mr. Doherty: Certainly, your Honor, it calls for a conclusion and opinion as to what was available. [646]

The Court: No; it doesn't. It calls for a definite answer yes or no, categorically, first.

A. The answer is no, Mr. Christensen.

(Testimony of Larry Finley)

Q. By Mr. Christensen: Are you familiar with the manner by which bands are made available to ballroom operators in and about the Los Angeles and San Diego areas? A. Yes.

Q. Will you explain?

A. Well, in the San Diego area, for example, the usual thing that happens is this: M. C. A., G. A. C., the Frederick Brothers, or the other agency, William Morris, brings a band out to play.

Q. Brings a band out, that is from some place?

A. Some place in the East. I might change it, if I may, and explain that this way: The band is in the East and is booked into a key spot. With M. C. A. the key spot might be the Palladium, the Casino Gardens, the Aragon, or the Trianon ballroom in Los Angeles, or it might be for the purpose of making a motion picture. Usually, before a band goes into one of these spots for their engagement, they are brought out one or two weeks in advance of this time, at which time they are available to play in the San Diego area. Then, at the conclusion of their Los Angeles engagement, they can either play San Diego for one or two weekends, as they sometimes do, or if they want to stay out on the Coast longer, [647] they play San Diego. There is a week's booking available at the Orpheum Theatre here; there is the Golden Gate Theatre in San Francisco; and there is a one-night tour through the northwest which goes right up to Canada that a lot of orchestras take, and their usual route back East again.

Mr. Doherty: Your Honor, I did not want to interrupt the witness, but it seems to me he is only giving a recital of a story, something that he does not know himself. It

(Testimony of Larry Finley)

is a conclusion; it is argumentative; it is a picture rather than the fact.

Mr. Christensen: May I ask one question?

The Court: Yes, sir.

Q. By Mr. Christensen: Do you know that from your own knowledge and observations?

A. Yes, I do, Mr. Christensen.

Q. A few moments ago you told us about going into partners with the Dorseys. Was that with Tommy and Jimmy Dorsey?

A. Yes.

Q. I believe that was in the management and operation of the Casino Gardens at Ocean Park, is that right?

A. Yes.

Q. When did that commence, sir?

A. In the middle part of May. There were two deals, Mr. Christensen. One deal was, I purchased a one-third [648] interest in Collonades, Incorporated, which is the operating company for the Casino Gardens. Then I entered into a contract, a personal contract, with Collonades, Incorporated, to assume the management of Casino Gardens.

Q. The stockholders of the Collonades were Jimmy Dorsey, Tommy Dorsey, and yourself?

A. That is correct.

Q. And you did manage and operate that ballroom for how long, sir?

A. From the middle part of May until January 5th, 1946. [649]

Q. And was that a profitable operation, sir?

A. Yes, it was.

Q. What bands did you use there?

A. Tommy Dorsey, Jimmy Dorsey, Glen Gray,—

(Testimony of Larry Finley)

Q. Well, instead of that, can you tell me whether they were all from one agency or were they from different agencies?

A. No, they were from different agencies.

Q. What portion of the number you used were from M. C. A.?

A. The greater proportion.

Q. Did you talk with anybody from M. C. A. concerning the furnishing of bands to you there at Cosino Gardens?

A. Yes.

Q. With whom, sir?

A. Well, Mr. Howard was the man that I did most of my talking with. I did discuss it with Mr. Barnet, and talked about it with Mr. Bishop.

Q. Which of those conversations was first?

A. The first conversation was with Mr. Barnet.

Q. When and where was that?

A. Well, when I got back from New York, after making the deals with the Dorseys, I went in to Mr. Barnet and asked what was available in the line of bands for Casino Gardens. That was at the M. C. A. offices. He gave me a list of bands, and I don't recall if—I don't recall just who was on the list. He gave me a list of bands and I had a nice discussion with [650] him about it.

Q. How many bands were on the list, do you remember?

A. I don't recall, but I think there were six or seven, Mr. Christensen.

Q. And you chose some of them, did you, sir?

A. No, it was just a general discussion at that time. I went in to tell Mr. Barnet I wanted him to be the first in the office to know I had gone into the deal, and from then on Mr. Howard was the man—in fact, I asked him,

(Testimony of Larry Finley)

if I remember right, if Mr. Howard could take care of me down there.

Q. Have you now fairly and fully given us all the conversation that occurred on that occasion with Mr. Barnett?

A. Substantially, yes, Mr. Christensen.

Q. Then the next conversation concerning the booking at Casino Gardens was when, sir?

A. Well, one night Mr. Howard, and I think Mr. Bishop, I am not sure, came down with the Tommy Dorsey contract for signature, which was just a formality. That was Mr. Dorsey's engagement at Casino, which, of course, was through M. C. A.

Q. There was no particular conversation on that occasion, sir, concerning bands at Casino?

A. No. We kidded about it. I kidded about Tommy paying M. C. A. a commission for playing in his own place. That was just about all that happened.

Q. Then, if I understood you correctly, there was a [651] subsequent conversation concerning that same matter?

A. No, there was a discussion with Mr. Bishop at Ocean Park. That wasn't concerning—wasn't directly concerning bands at Casino.

Q. When was that, sir?

A. Oh, I should say probably in the middle of June.

Q. Was any one else present besides yourself and Mr. Ames Bishop?

A. Well, we had a little heart to heart talk as we were walking down the boardwalk there. There was only the two of us.

Q. Was it concerning bands in general, or in particular?
A. Yes, it was.

(Testimony of Larry Finley)

Q. Then will you tell us the conversation?

A. I told Mr. Bishop that I didn't want there to be any hard feelings, or anything in M. C. A.'s mind as far as connecting Casino Gardens and Mission Beach; that they were two separate operations, and the fact that they had their deal with Dailard in San Diego had no effect on my securing bands for Casino Gardens; that I wanted and needed bands for the Casino. And at that time Bishop told me, repeated the story that as far as the San Diego deal was concerned, why, he did it to protect his friend, Dailard. And we shook hands and became friendly after that. [652]

Q. Now, the Aragon Ballroom is located just one block from the Casino Gardens; is that right? A. Yes.

Q. Does the Aragon Ballroom also run name bands?

A. Yes, they do.

Q. M. C. A. name bands?

A. M. C. A. name bands.

Q. What, if any, effect have you observed on the Casino Gardens attendance when, for example, the Oragon Ballroom is running a top name band?

A. Well, I had one real chance to observe that. That was the week-end—it was Tommy Dorsey's last week-end at Casino Gardens. We were afraid business was going to fall off because it was his last week-end and M. C. A. had booked Cugat into the Aragon just one block away, and it meant two of their top, big name bands bucking each just one block away.

I clocked the Aragon, and I know they did a capacity business with Cugat for three days. Also, we also did a capacity business with Tommy Dorsey. So it didn't affect us in any way, Mr. Christensen, so far as the box

(Testimony of Larry Finley)

office was concerned. In fact, I think it helped us, if anything.

Q. Have you talked with any one from M. C. A. concerning getting or for the purpose of getting name bands for Mission Beach since Mr. Stutz has taken over Pacific Square? [653] A. Yes, I have.

Q. And with whom, sir?

A. Ames Bishop called me up.

Q. When was that, sir? I hate to interrupt you, Mr. Finley, but we should lay that foundation.

A. I believe it was in September or October, and he told me that he had a band available for me at Mission Beach. I don't recall the name of the band now. I know at the time I had never heard of it, and he told me what a great band it was. I am trying to think of the name, and I can't think of it. It was an all-girl orchestra.

Q. Could the name have been Caylor?

A. Yes, it is, Joy Caylor and her all-girl orchestra. I told Mr. Bishop I hadn't ever heard of the band and he ought to be ashamed of himself for asking me about it. So he went on to tell me what a great band it was. And I stated to him, I said, "Ames, let's quit the kidding." I said, "When are you going to give me some of your top bands, like Harry James and Krupa?"

And he says, "You are not going to get them."

I asked him if—I said, "Do you still have the same deal with Stutz as you have had with Wayne Dailard?"

And he said, "Stutz still continues to get first choice of bands in the San Diego area."

I said, "Is that the way you still feel about it?" [654]

And he said, "Yes."

(Testimony of Larry Finley)

That is the conversation—that is the only conversation I have had with him about Mission Beach.

Q. Well, is it necessary for you to have name bands at the Mission Beach Ballroom in order to successfully operate it?

A. Yes, just so long as our competition is what it is. There are two Class-A ballrooms. One is ours and one is Pacific Square. If we ran name bands and Pacific Square ran semi-name bands, they wouldn't do business, and we would. People are educated today as to names in music, and we must—if we were the only place to go to, Mr. Christensen, we could probably give them anything, but we are not. We have that competition to consider, and the ballroom definitely needs name bands to operate at a profit and successfully.

Mr. Doherty: May I ask you to fix more definitely the time and place and parties present of that conversation that he has related between Mr. Bishop and himself, and which he said took place some time in September or October? In other words, was it a telephone conversation, or a personal call, and will you develop where one was and where the other was, please?

Mr. Christensen: You are perfectly right, Mr. Doherty.

Q. By Mr. Christensen: Please do that, Mr. Finley.

A. It was a telephone conversation. I didn't call [655] Mr. Bishop. He called me.

Q. Where were you at the time?

A. I was in the office at Casino Gardens at the time. I believe he was in his office, and he probably could give you the date of it. I don't recall.

(Testimony of Larry Finley)

Q. Well, can you fix the date more definitely or more certain?

A. I am sorry, Mr. Christensen, I can't.

Q. Yesterday I had asked you something concerning the weather at San Diego, but I had only asked you concerning some of the fog. What is the weather generally there?

Mr. Doherty: Where is this?

Mr. Christensen: At San Diego, at Mission Beach.

The Witness: A. The weather at Mission Beach. It is really beautiful most of the time. We have warm evenings in town that drive people out to the beach in droves. I would say we have nine months, from my observation down there, of top weather. By "top weather" I mean nice warm sunshiny days and nice cool evenings at the Beach; ideal weather. I might state ideal beach weather for at least nine months of the year.

Q. By Mr. Christensen: Can you tell us something of the attendance there at the Mission Beach Amusement Center?

A. We have had as many as thirty-five and forty thousand people there on a Sunday afternoon. [656]

Q. Tell me what part of the year that would be.

A. Strangely enough, it is all through the year. We don't have it every Sunday, but there hasn't been too much change. Of course, on the 4th of July, and days like that, we have record-breaking crowds there. We had over 50,000 people there the 4th of July. But it is very strange, the attendance during March, April and October, November and December on Sunday afternoons will run capacity.

Q. What about the evenings, sir?

A. At the Beach?

(Testimony of Larry Finley)

Q. Yes, sir.

A. Very good crowds. That is at the Amusement Center.

Q. Well, the word "good" might mean something different to every one of us.

A. Very large crowds, I should say.

Q. That is the same thing. Can you estimate the number?

A. Five to ten thousand people on Sunday evenings, some Sunday nights. It would vary anywhere from 50 people to 5,000 people.

Q. The 50, on what kind of a night would that be?

A. Well, Sunday night, this past Sunday night, they had the rainstorm in San Diego in the evening that they had here Sunday noon, and I don't think there were 50 people there that particular night, and everything was closed. The park was really closed down. We had 60 people in the ballroom Sunday [657] night.

Q. Now, what has been your attendance in the ballroom there, using the same period of time?

A. Well, that varies also, Mr. Christensen, with—

Q. Explain it, please.

A. Well, with Tommy Dorsey there we had 2500 people, or 3,000 people, I think. Yes, I am quite sure that is right.

Q. You mean every night?

A. No, I am talking about Sunday nights. I am taking Sunday as the day. With most of our bands we can figure an average of four or five hundred people on a Sunday night. There is really nothing in the ballroom in the evening for them to stay over, to come to the ballroom.

(Testimony of Larry Finley)

Q. Could you give us an average for the Sunday night attendance at the ballroom, using different months or different seasons, as you need to, to explain it?

A. It would be pretty hard for me to say because I don't know definitely. I could hazard a guess on it, Mr. Christensen, if you like.

Q. If it is only a guess, I don't want it, but if it is from observation, I do.

Mr. Doherty: I think this witness has records that could give us very accurate information rather than a guess or estimate.

The Court: I would think so. [658]

Mr. Christensen: I am speaking of attendance rather than dollar volume right now.

The Court: I presume, without knowing it, that there is an attendance record kept at the gate?

The Witness: Yes. We have a federal law, your Honor, and I can get those figures for you, Mr. Christensen.

Mr. Christensen: Well, I want you to please do so before the end of this trial.

The Witness: Yes.

Q. By Mr. Christensen: Now, on occasions, at least, the Mission Beach Ballroom is let for private parties, isn't it?

A. Yes, we rent it out and give it out, both.

Q. Well, you rent it out on what sort of occasions?

A. We rent it out for private parties, where, for example, some of these boats come into the harbor. There is the flat-top, the Shangri-La, came out and we rented it

(Testimony of Larry Finley)

out to them. In fact, we just rented it to them last week. There was an occasion last week when it was rented to them, on Thursday night.

Q. And on occasions, you say, you give it out. Give us an illustration of some of those occasions.

A. We have donated the ballroom free of charge to the policemen, the firemen, and two or three other organizations for charitable work. We gave out the ballroom to the [659] Indoor Sports, Inc., which is an organization comprised of physically handicapped people. In that particular case we not only gave them the ballroom, but we gave them the band, we printed the tickets, we did their advertising, and we raised \$14,000.00 for them to build a new clubhouse.

Q. On these private parties, have you noticed what bands were used there?

A. Yes, every one's bands, including M. C. A.

Q. You mean M. C. A. has furnished bands to the Mission Beach Ballroom when a private party is being held there?

A. That's right. Not through us, however, Mr. Christensen. They make the deal with whoever is running the party.

Q. All right. Can you give me some illustration of that?

A. Well, the last one I am familiar with is Jan Savitt, who is a name band, and I think it was last Thursday night he was there for some kind of a Marine party.

Q. Some other occasions, sir?

A. I couldn't tell you. Mr. Austin has the record of that.

(Testimony of Larry Finley)

Q. Now, I recall Mr. Dailard saying the sea waters come up to and in the ballroom. What has been your experience there?

A. Never in the year and two months that we have [660] operated there have we had any water in the ballroom that has washed up from the sea.

Q. How far are you actually from the water? I am not talking about the sand beach, but from actually the mean high tide line.

A. The mean high tide line—well, once or twice a year the tide comes up to the boardwalk level, but we have never had any damage in the ballroom from the tide coming in from the ocean.

Q. What is your schedule of prices at Mission Beach, Mr. Finley?

A. Anywhere from 49 cents to \$1.75.

Q. Well, tell me how does the difference happen?

A. We opened originally with a price of \$1.25 per person. Then when we got Jimmy Dorsey in we figured the price would have to be a little bit higher on Saturdays and Sundays and week-ends and holidays to carry the tremendous price that we had to pay for him. So we checked, and we found that the Square, Pacific Square, was charging, I think it was \$1.85 on Saturday nights. So we raised our prices on Saturdays, Sundays and holidays to \$1.75, and let it continue at \$1.25 through the week. Then when Tommy Dorsey came in, I went out on the floor one night and I talked to some of the kids out there, and I asked them if they thought \$1.75 was too high for Tommy Dorsey. [661]

(Testimony of Larry Finley)

Q. I think you had better not give us any more of that conversation.

A. I am sorry. Our price for the Tommy Dorsey engagement was also \$1.75. After the Dorseys were out, we dropped back to \$1.25 with Glen Gray, and when we put a local band in, we didn't have much to offer in the way of music, so we dropped the price down to 49 cents plus tax, which is a 60-cent admission. That is the schedule of prices we have had.

Q. Do you know the schedule of prices at Mission Beach? A. At Mission Beach?

Q. I beg your pardon. I mean at Pacific Square.

A. \$1.25, \$1.35 and \$1.85. That is what it was a year ago, Mr. Christensen. I don't know if it still is.

Q. Now, you give us three figures.

A. I can add another figure. On Wednesday nights they advertise a waltz night at 90 cents. Tuesday nights they have their western night, and I believe they charge \$1.25 for that. On Friday nights I know they charge \$1.25. It is \$1.25 or \$1.35 on Saturday nights, and for some engagements \$1.85, and on Sunday nights back to \$1.25 or \$1.35.

Q. You say Tuesday nights are western nights at Pacific Square?

A. It used to be. It isn't any more.

Q. During what period of time was it that?

A. Right after my opening for a period of six months [662] approximately.

Q. Was that Bob Wills? A. That's right.

Q. Did Pacific Square have any western bands prior to the time you opened at Mission Beach?

A. No, they didn't.

(Testimony of Larry Finley)

Q. Why didn't you use a western band at Mission Beach?

A. Well, the only real draw in the country was Bob Wills, and when I took over Mission Beach they put him in the Square for Tuesday nights, and they made Tuesday night a western night. There was no sense in running anybody up against Bob Wills. He played at Pacific Square until he just played out; I mean, he was just there so long.

Q. I have already asked if you operated Casino Gardens, during the time you operated it, at a profit, I believe, but will you answer the question? I am not sure I asked you.

Mr. Doherty: Yes, he said it was a profitable operation.

The Court: I didn't hear you, Major.

Mr. Doherty: The question was asked him, and he said it was a profitable operation.

Mr. Christensen: That refreshes my memory. I think that is true. I will withdraw that.

Q. By Mr. Christensen: Will you tell me if your operation of the Trianon Ballroom has been a profitable operation during the time you operated it? [663]

A. Yes, sir.

Mr. Doherty: That is objected to as incompetent, irrelevant and immaterial, and outside the issues of this case. There is no way for comparison and it leads to speculation and guesswork.

Mr. Christensen: I offer it for the purpose—

The Court: Overruled.

The Witness: I am sorry, your Honor?

The Court: You may answer.

(Testimony of Larry Finley)

The Witness: Yes, the Trianon operation has been a very profitable one.

Q. By Mr. Christensen: Now, at the Mission Beach Ballroom did you do anything about promotion and advertising? A. Yes, quite a bit.

Q. Will you tell us what you did, sir, in order to bring the people down there?

A. The first thing we did was to get in the good graces of the military personnel in San Diego, and we wanted to show them in the quickest way possible that the operation of the park and the ballroom had changed. So we arranged to present shows on Saturday afternoons and Sunday afternoons, using the bands and the shows that we had at Mission Beach and also at the Trianon Ballroom.

I also arranged with the Department of Welfare and Recreation to supply the ballroom to them on Monday nights [664] free of charge, no charge for the ballroom, with the understanding that they would supply a military band for dancing, and they were to police it properly, send out extra Shore Patrol, and to permit any one in uniform, either male or female, and any girls, any civilian girls, in to dance with the boys free of charge. Also, on that particular night, we called it Military Night, we readjusted our prices throughout the park for the servicemen. We dropped the price of hot dogs from 10 cents to 5 cents, and all soft drinks from 10 cents to 5 cents. We let them play the amusement games for 5 cents, and let them ride the various rides out there for a dime. And it worked out very good. We had as many as seven and eight thousand men out there on Monday nights.

(Testimony of Larry Finley)

Also we donated the ballroom to the U. S. O. on Sunday afternoons for U. S. O. dances, which brought a lot of the military personnel out there on Sunday.

Then we had various functions with the newspapers, various promotional days, and had several things happening. Our most successful thing that happened in the ballroom was the Indoor Sports proposition, where we raised directly over \$14,000.00 and started the ball rolling for a \$50,000.00 goal for them to attain for these crippled people, and that was probably the greatest exploitation which we had in so far as the civilian trade was concerned. We receive letters from all over the world from servicemen that said they appreciated [665] what we were doing there.

I think those three things cover the main exploitations regarding the ballroom.

Q. And about advertising, sir?

A. We utilized the radio, newspaper, billboards, posters, sound truck. We even had a little gag on the street with a donkey.

Q. You had what?

A. With a donkey. We call it street promotion.

Plus that, there is an organization called the Heaven on Earth Club in San Diego that exploits the fine weather in San Diego, and that has a weekly radio program. They gave us, I think it was, four 15-minute periods free of charge to exploit the Beach, and a lot of the service clubs that had time on the air gave us free time.

Then we had a radio wire in the ballroom, in both ballrooms, I should say, at Mission Beach and also at the Trianon. and we would use the Trianon radio at times to exploit Mission Beach.

(Testimony of Larry Finley)

Then there is a great medium of advertising in San Diego called trash can advertising. Street poster service, they call it, and we have a contract with the City of San Diego whereby they keep the streets clean, and they have these trash cans that measure approximately 24 by—I think it is 24 by 30 or 24 by 32, and they are four-sided cans. They [666] have over 500 of them in San Diego, and they post sheets on these cans. At one time we were using over 400 trash cans for the purpose of exploiting the Beach. These cans are place—they are placed all over town, but particularly near where the boys come off the ferry from Coronado, where they come off the boats. That is probably the most effective means for hitting service personnel. I believe I told you we used over 400. We also used street cars.

Q. You mean banners on the street cars?

A. Banners on the street cars. I can say we used every known way for promotion and advertising.

Q. Yesterday you told us about making some changes in the electric lighting or wiring at Mission Beach, and I am not quite sure what it was you did. Do you want to get a drink of water?

A. No. I am sorry. I caught a little cold last night.

We have over 100 overhead fixtures in the ballroom. They are quite large. They are approximately 24 inches, that they would measure across the bottom, and five or six feet in height. There are over 100 of them, and they are all controlled by the central board. When the City built this ballroom, I understand it spent over \$100,000.00 on the wiring alone, just for this large ballroom. It is larger than any board for any theatre in San Diego. [667]

(Testimony of Larry Finley)

I wanted to operate the ballroom on the basis that lighting adds romance to a ballroom, and adds atmosphere, and the greatest way to get atmosphere is with proper lighting.

So, on checking, we found only 32, I think it was, of these lights that were in working order, and we had to have them all rewired. Now, for any change in tempo there are 13 different color combinations, and for every change in tempo there is a different change in lighting. In other words, for a waltz we give them a light blue lighting, and we have what you call twinkling stars, we have arranged a twinkling system on the ceiling and have twinkling stars. For a jump number, when the kids are jive dancing, we give them bright lights or red lights.

Another thing we have done, I had Professor Schwenkowski, who is dean of art at U. S. C., paint 24 portraits of motion picture stars. We call that the "Gallery of Stars." We have them on the pillars there. They are large pictures, I think it is about 22 by 32 or 33, about the same size as the trash can poster, and we have individual lights over each of the pictures. That also is on a rheostat and they dim, they go on and off during the evening.

We have done a great deal of concentrating on lighting, and our stage lights have been fixed up, and we have, I believe it is, 12 spotlights from the stage alone.

Q. Now, during the time that you have been operating [668] Mission Beach what has been Mr. Dailard's advertising?

A. Mr. Dailard was using—in the first term they had, "Home of M. C. A. World Famous Bands."

(Testimony of Larry Finley)

Q. And has that continued right straight through?

A. Well, up to the time he sold it. His sig. cut, the part of it that had where the band is playing, say, if it is Pacific Square, why, the sig. cut always had on it, "Music Corporation of America Bands." But the first campaign that hit us was billboards and street cars, and six-sheets, and all said it was, "Pacific Square, Home of M. C. A. World Famous Bands."

Q. Does that continue right up to this date?

A. No, with Mr. Stutz taking the place over, it has been discontinued. In fact, the only mention of M. C. A. —well, I don't know if it is the only mention and, of course, the ads all carry, "M. C. A. present Bob Crosby," or "M. C. A. presents" whatever the band is. But there are still signs on the building that say "Music Corporation of America bands," painted as a part of the Pacific Square Building.

Q. Now, do you know whether or not you made or lost money in the operation of the Mission Beach Ballroom since you have taken it over?

A. I have lost money, Mr. Christensen.

Q. Can you tell me how much, sir?

Mr. Doherty: Let me say that his books of accounts and [669] records are the best evidence, unless he wishes to give merely an estimate.

The Witness: I could give an estimate at this time.

The Court: He is the owner of the project, and I think he may answer that. Overruled.

What are you examining there?

The Witness: A notation I made of figures, your Honor.

The Court: Proceed.

(Testimony of Larry Finley)

The Witness: I have to add two of them here.

Mr. Doherty: Let the record show that the witness is reading from a memorandum in his hand.

The Witness: \$122,000.00 loss on the ballroom up until December 31st.

Q. By Mr. Christensen: Since December 31st of 1945, have you made or lost money to this date?

A. We have lost money, but I can't tell you how much, as I haven't seen a statement yet.

Q. Can you estimate it?

A. No, I can't. I haven't any idea.

Q. You have had quarterly reports, or, I think it is quarterly reports, isn't it, sir?

A. Yes, we have.

Q. Made by a certified public accountant?

A. That's right.

Q. I find here the report as of February 28, 1945, as [670] of May 31, 1945, as of July 31, 1945. Was there another quarterly after that, sir?

A. What was the last one you read, Mr. Christensen?

Q. July 31, 1945.

A. When is the next one you have?

Q. Oh, probably it is this one. Yes, as of September 30th, 1945? A. That's right.

Q. Then as of December 31, 1945? Is that correct, sir? A. That is correct.

Mr. Christensen: Mr. Doherty, there are copies right here and Mr. Jaffe will make the copies available for your inspection.

Q. By Mr. Christensen: Is this document which I hand to you here, "Mission Beach Amusement Park, San Diego, California, financial statements as of February 28,

(Testimony of Larry Finley)

1945," and which appears to be on the stationery of Jack M. Ostrow, Certified Public Accountant, Los Angeles,—is that the report as of February 28, 1945, sir?

A. Yes, it is.

Mr. Christensen: We will offer this as our next exhibit in order.

Mr. Doherty: Objected to on the ground that no foundation has been laid, and it is hearsay.

The Court: May I see the document? [671]

Mr. Christensen: Right here, your Honor.

(The document referred to was handed to the court.)

Mr. Doherty: No basic foundation has been laid. This witness did not prepare this. It is hearsay as to him, and not binding upon these defendants.

The Court: I suppose there should be some regular proof of the C. P. A.'s status, unless it is agreed that he is a certified public accountant.

Mr. Doherty: It does not permit me, your Honor, to cross-examine any one.

The Court: No, but it permits you to submit these to other experts who can give you their version of it.

Mr. Doherty: Not, your Honor, without reexamining the books. We would have to have a certified public accountant go over them and examine all of their records.

The Court: The document appears to be of the entire project. I have noticed, however, in the exhibit a statement with respect to the ballroom itself. The books, of course, should be produced so that the other side can examine them. We want to expedite the proceeding as much as possible, and under the appropriate federal authorities it isn't necessary that we take up the time in the court room by a meticulous examination of financial

(Testimony of Larry Finley)

records, but it is essential that if audits are to be introduced that the supporting documents be made available to the other side. That has been clearly [672] held in the Ninth Circuit in three or four important mail fraud cases.

Mr. Christensen: They are available, your Honor.

The Court: I don't see them here. If they are here, then probably the better way would be to put the auditor on the stand and have him testify.

Mr. Christensen: We don't actually have him in court now.

The Witness: Pardon me. Mr. Ostrow was due here at 11:00 o'clock. He is due here in a minute, your Honor.

The Court: If he comes in, you can put him on the stand. But that is the rule, ladies and gentlemen, in order to save time. Otherwise we would have an interminable proceeding in having the books examined *seriatim* in the court room. Now, in order to save time, the decisions have obviated that necessity in cases of this kind, but the supporting documents must be here so that they can be examined by the other side, and the testimony must come through the mouth of the auditor who has made the examination, so that then it comes under the sanction of an oath.

I do not believe that the audits themselves, in the face of the objection, are admissible at this time.

Mr. Christensen: Would you be willing to stipulate that Mr. Ostrow is a certified public accountant, sir?

Mr. Doherty: He has signed his name as such. I know he [673] would not do that if it were not true.

The Court: It appears that he is available. I think he could be produced.

(Testimony of Larry Finley)

Mr. Christensen: He is supposed to be here at 11:00 o'clock, and I notice it is now 11:00 o'clock, your Honor. He will be here any minute.

The Court: The objection is sustained without prejudice.

Ladies and gentlemen, we will take our recess at this time. Remember the admonition and keep its terms inviolate. Occupy the jury room during the recess.

(A short recess was taken.) [674]

The Court: All present. Proceed.

Mr. Christensen: Mr. Ostrow has not as yet arrived, and may I suggest that we proceed to cross-examine on other matters and give us an opportunity to recall Mr. Finley, if necessary, in connection with the books, or we can have the books here as quickly as possible.

The Court: Is that the only phase of the examination of the witness that is uncompleted?

Mr. Christensen: That is correct, your Honor.

Mr. Doherty: I was going to suggest, your Honor, for our convenience, if counsel would give us duplicate copies of the various audits he intends to introduce?

The Court: Yes; that could be done.

Mr. Doherty: And that will probably give us a chance to examine them during the noon hour.

Mr. Christensen: Haven't you gotten them yet?

The Court: I understood Mr. Christensen to say he has them here.

Mr. Doherty: I understood from Mr. Warne—

Mr. Warne: You have not given me any of the additional ones.

Mr. Christensen: They are right there, Mr. Doherty. I am sorry I did not actually hand them to you.

(Testimony of Larry Finley)

The Court: Let us mark all the originals for identification, Mr. Christensen. [675]

Mr. Christensen: In addition to the ones you have, there you are, sir.

The Court: How many are there? Let us mark them all as one exhibit, serially.

The Clerk: All as one exhibit?

The Court: Yes, serially.

The Clerk: There are six in all. They will be Plaintiff's Exhibits No. 12-A, 12-B, 12-C, 12-D, etc.?

The Court: 12.

The Witness: Pardon me, your Honor. Mr. Ostrow has just come in.

The Court: The witness states that Mr. Ostrow has just entered the courtroom.

Mr. Warne: These are marked for identification only, your Honor, at this time?

The Court: That is all; so that you will be able to make the comparison. That was the purpose of marking them.

Mr. Warne: Yes.

(The documents referred to were marked as Plaintiff's Exhibits Nos. 12-A, 12-B, 12-C, 12-D, 12-E and 12-F, for identification.)

Mr. Christensen: May I recall Mr. Finley at this time, and ask Mr. Ostrow to come forward, if you would like to do it in the manner that I first suggested?

Mr. Doherty: Whichever way will be more convenient to [676] counsel in the order presentation of his case. He can have Mr. Finley step aside and introduce his auditor, or proceed to finish with Mr. Finley.

(Testimony of Larry Finley)

Mr. Christensen: Let us proceed and finish with Mr. Finley, and then I would like to get all the reports available for you.

Mr. Doherty: Are you through now with your direct examination?

Mr. Christensen: Yes, with the single exception I told you.

Mr. Doherty: Which was that?

Mr. Christensen: The books.

Mr. Doherty: About the books?

Mr. Christensen: Yes, sir.

Cross-Examination

By Mr. Doherty:

Q. Mr. Finley, you stated yesterday that you were 32 years of age?

A. Yes; that is correct.

Q. And where were you born?

A. Syracuse, New York.

Q. How long have you been a resident of Los Angeles County?

A. Since 1934, with the exception of the period starting in February of 1944, from February of 1944 until—I [677] think it was October of 1945.

Q. And where was your residence from February, 1944, until October of 1945?

A. In New York City and also in San Diego.

Q. What part of that time were you a resident of New York City?

A. From February until—from February of 1944 until July of '44.

(Testimony of Larry Finley)

Q. And when did you become a resident of San Diego County?

A. In July of '44.

Q. And how long did you continue to be a resident of San Diego from July, 1944?

A. Until we moved back to Los Angeles. I think it was October of '45, but I am not sure of the month. That might be one month one way or the other.

Q. You gave your deposition in this case on October 8, 1945? A. That is right.

Mr. Doherty: Have you a copy of the deposition, Mr. Christensen?

Mr. Christensen: Yes, I have, sir.

Q. By Mr. Doherty: And that was taken here at Los Angeles? A. Yes. [678]

Q. You were represented at that deposition by Mr. Desser, Mr. Rau and Mr. Christensen, your attorneys?

A. Yes.

Q. And the defendants were represented by Mr. Warne, I believe, Mr. Clore Warne? A. Yes.

Q. I will direct your attention—

Mr. Christensen: Actually, by Mr. Rau.

Q. By Mr. Doherty: Mr. Rau was present at the taking of the deposition. I will direct counsel's attention, if you will show the witness for convenience and to follow it, page 3 of that deposition, beginning on line 4, and ask if you did not at that time give this testimony:

“Q. By Mr. Warne: Where do you reside, Mr. Finley?

“A. 164 North Woodburn Drive, Los Angeles, and 4255 Ridgeway, San Diego.

(Testimony of Larry Finley)

"Q. Which of those two places do you maintain as your residence for tax purposes?

"A. 4256 Ridgeway, San Diego.

"Q. You have lived there how long?

"A. Seven months."

You so testified? A. Yes.

Q. And your residence, then, began in San Diego, seven months prior to October the 8th, 1945? [679]

A. That is a mistake on your part, Mr. Doherty. My residence in San Diego—this was not my first residence in San Diego. I bought this home seven months prior to the time I gave this deposition. I also had another address in San Diego previous to this one.

Q. You have lived at another address? A. Yes.

Q. Well, I will continue. Line 12, page 3:

"Q. Have you made any tax returns from that address and giving that as the official address?

"A. No, not as yet.

"Q. Have you ever voted in that county?

"A. No, not yet."

Is that correct? A. Yes.

Q. Back in Utica, New York, you were employed by a firm in the jewelry business known as Marksons, I believe? A. That is correct.

Q. When did you go to work for them?

A. When I was eight years old.

Q. When you were eight years of age?

A. That is correct.

Q. In what capacity?

A. Clean-up boy, porter, errand boy, before schools and after schools. [680]

(Testimony of Larry Finley)

Q. That would be in 1922? A. 1921, I believe.

Q. 1921? A. Yes.

Q. You were born in 1913? A. That is correct.

Q. And what month?

A. May; the 4th day of May.

Q. You will be, then, 33 next May?

A. That is correct.

Q. How long did you continue to work for Marksons?

A. All through the time I was going to school, grammar school and high school, and after I got out of high school. I believe the year was—well, that taxes my memory. If I recall right, I left Marksons in 19—I think it was '31, and then just before I resumed, just before I took over the management of the Cafe DeWitt in 1934 I worked for them for five or six months previous to that time.

Q. After you left high school in what capacity did you work for Marksons?

A. I managed their jewelry department.

Q. Did they have other departments in that store?

A. Yes. It was a very large furniture store with a small jewelry department in it.

Q. And you were at that time about 18 years of age? [681]

A. If you figure it back, that might be it; yes, sir.

Q. Was it credit jewelry? A. Yes.

Q. And sold trinkets and watches and clocks and things of that sort, like you do in a small credit jewelry store? A. Yes.

Q. And you say you were in charge; you were both the head and the tail of it, were you not? A. No.

(Testimony of Larry Finley)

Q. How many employees did you have under you when you first took charge in the jewelry department?

A. Two.

Q. Sales girls?

A. One sales girl, one watchmaker.

Q. One watchmaker? A. Right.

Q. And you continued with that until you were then how old—until you went to the Cafe DeWitt?

A. Around 20 years of age. I think I left them at '31 and went back to work for them prior to the Christmas season. I know I went back to work for them prior to the Christmas season. I know I went back to work for them prior to the Christmas season of 1943.

Q. And during the time that you were working for them as a salesman did you work six days a week? [682]

A. Are you talking about while I was going to school, Mr. Doherty?

Q. No; after you left school. I understand when you went to school it was only intermittent? A. Yes.

Q. And sometimes during vacations and sometimes on a Saturday afternoon or a Saturday morning?

A. That is not correct.

Q. When you were going to school did you work six days a week?

A. Six and seven days a week.

Q. And went to school, too? A. Yes.

Q. That is high school? A. That is right.

Q. You went over there after school hours?

A. I went there before school, I went there after school, and I worked many Sundays.

(Testimony of Larry Finley)

Q. Did you run the jewelry department as the manager while you were going to school? A. No.

Q. I am speaking, Mr. Finley, of the time you became manager of the jewelry department. Did you work six days a week or—

A. Six or seven; yes. [683]

Q. You kept open on Sundays? A. No.

Q. Work evenings, too? A. At times.

Q. And was that true during all the years that you worked with them until you left them in 1931?

A. No; it wasn't.

Q. What hours did you work other than what you have stated?

A. Well, I worked less hours. For a while I had this band idea in mind and I would take a leave of absence while I worked with the band.

Q. That would be in the summer months?

A. Yes; in the summer months.

Q. But during the other months you worked there six and seven days a week?

A. Yes, at times, for spells.

Q. And you did not do any band business, entertainment business during that period, did you, excepting an occasional night engagement?

A. That is correct.

Q. And when you took these summer vacations how long would they be—two or three weeks or longer?

A. I remember one vacation was a six-weeks vacation.

Q. Did that happen more than one year? [684]

A. I honestly don't remember. I don't think it did.

(Testimony of Larry Finley)

Q. And that is your activities in the entertainment business so long as you were with Marksons?

A. That is correct.

Q. And you left them when you were 20 years of age?

A. Well, no. You see, I left them before 1931. I left them for a spell while I went to work for Station WSYR in Syracuse.

Q. What power was that station?

A. At the time? It was either 500 or 1,000 watts.

Q. What was your job with that station?

A. I was the salesman on the commercial staff; I did some announcing and I produced a few shows.

Q. And by a salesman, you mean you went around to various firms that wanted to advertise and had them agree to advertise over the station?

A. That is correct.

Q. And sometimes you announced the accounts that you solicited?

A. Yes.

Q. And you did that on a salary or commission basis?

A. Both salary and commission.

Q. And then you promoted some small shows?

A. Yes.

Q. Then, after you left—how long were you with that [685] radio station?

A. About a half a year, if I remember right. It goes back quite a ways.

Q. Then where did you go?

A. After I left the radio station?

Q. Yes.

A. As I remember, I went back to Marksons for a while.

Q. In charge of the jewelery department?

A. That is right.

(Testimony of Larry Finley)

Q. How long did you stay at Marksons?

A. I can't give you dates, Mr. Doherty. It is pretty far back. But I remember the—

A. Approximately the number of months; were you there six months or less than six months or more than six months on that occasion?

A. Well, I think it was over a year, if I am not mistaken.

Q. Over a year on that occasion? A. Yes.

Q. And then that brought you up until you were about 20 years of age? A. 20? No.

Q. How old were you then?

A. Younger than that, I think.

Q. Older than that? [686]

A. Younger than that. Yes; that would take me to 17 or 18, wouldn't it?

Q. You were born in 1913, and you say you left Marksons in 1931 and you went to the radio station for about six months.

A. I didn't say I left Marksons—that is a mistake—in 1931. I left Marksons to take this job in the radio station in 1928. I believe I testified to that.

Q. 1928? A. That is right.

Q. At that time, then, you were 15 years of age?

A. That is right.

Q. And you were acting as a salesman for that radio station and doing occasional announcing?

A. That is right.

Q. And when did you go back to Marksons? Immediately after leaving the radio station?

A. Every time I would leave, they would come back, they would try to get me back, and I don't remember just

(Testimony of Larry Finley)

how long I was with the radio station. But I know they asked me to come back and I went back. That was six or eight months after I had left radio work.

Q. When did you finally leave Marksons, what year?

A. I finally left them January 1, 1934. That is the last time that I left them. [687]

Q. And that time you were then almost 21 years of age?

A. That is right.

Q. That is, lacking four months.

A. Five months.

Q. And before going back to Marksons the last time, you had this Cafe DeWitt, or did you go to the Cafe DeWitt after you left Marksons?

A. I went to the Cafe DeWitt after I left Marksons.

Q. That was in January, 1934?

A. January the 2nd, 1934.

Q. Now, you gave up your band business about 1931?

A. Approximately at that time, yes.

Q. That is when you were 18 years of age?

A. Right.

Q. And you had no further activities in playing in the band when you went back to Marksons that second time?

A. That is right.

Q. And then you went to the Cafe DeWitt?

A. Right.

Q. And you were not yet 21 years of age?

A. That is right.

Q. And you say you became the manager of that night club?

A. That is correct.

Q. That was located in Syracuse, New York? [688]

A. That is correct.

(Testimony of Larry Finley)

Q. And you stayed there six months? A. Yes.

Q. Then you came to Los Angeles?

A. Correct.

Q. And you were just past 21 then? Correct.

Q. And you endeavored, first, to get a job in the entertainment or radio field here? A. Correct.

Q. And you attempted to do that over a period of some three or four months? A. Yes.

Q. And you were not successful in getting the kind of employment or any employment in that particular field during that period?

A. At the kind of a salary I wanted.

Q. Yes. A. That is correct.

Q. So you went to work at a jewelry store here in Los Angeles? A. Right.

Q. What was the name of that jewelry store?

A. Tipps.

Q. T-i-p-p-s? [689] A. Right.

Q. Was that a credit jewelry store? A. Yes.

Q. And you lasted or you stayed there two weeks?

A. Right.

Q. And then you went to work for the Hudson Diamond Company? A. That is correct.

Q. And you stayed there over five years?

A. Approximately—well, let's see; approximately eight years.

Q. Approximately eight years? A. Yes.

Q. I don't want to be unfair to you. You came to Los Angeles in July, 1934? A. Yes.

Q. You spent four months looking for a job, which would bring you up until about November, 1934?

A. Yes.

(Testimony of Larry Finley)

Q. And then you went to work for David Tipps for two weeks? A. For two weeks.

Q. For two weeks, which will bring you, say, to December 1st, 1934? A. Yes. [690]

Q. Then you went to the Hudson Diamond Company, which would be approximately January the 1st, 1935. It would be December, but I am giving you the beginning of the year for easy computation. Now, that would bring you, if you worked there eight years, clear up into 1943?

A. I worked until the time I went into business for myself, which was 1939. So, how long would that be?

Q. Well, from 1935 to 1939 would be four, four and a half, five years, depending upon what part of the year you take it. A. That is right.

Q. So you want to correct your statement about eight years? A. Yes.

Q. Well, Hudson Diamond Company was also a credit house? A. A cash and credit.

Q. Yes. And were you working on a salary and a commission? A. Yes.

Q. In each instance. Then after you left the Hudson Diamond Company you went to work in Santa Monica, didn't you? A. Yes.

Q. You worked there on and off for a year?

A. I went back and forth from Santa Monica, from Reader's in Santa Monica to Hudson's downtown twice. I just [691] shuffled back and forth on two different occasions.

Q. But you were connected with the Santa Monica store for nearly a year, were you not? A. No.

Q. Or on and off for a year?

A. On and off for a year; yes.

(Testimony of Larry Finley)

Q. Was that during a part of the same time you were working for the Hudson Diamond Company?

A. I left the Santa Monica store to go in business for myself.

Q. What year was that, 1940? A. 1939.

Q. What part of the year? A. August.

Q. Now, during the time you were with David Tipps, when you came here in 1934, up to the time you went into business for yourself, what activity did you have by way of a living or calling in the entertainment or musical field during this period of approximately five to six years?

The Witness: Pardon me. Would you read that question again?

(Question read by the reporter.)

A. Oh, for three or four months I had a two-hour record show on KMPC in Beverly Hills. That was six mornings a week, sponsored by Hudson's. I would go down and prepare the program, [692] present it and announce it.

Q. In other words, Hudson Diamond Company would buy two hours on Station KMPC?

A. That is correct.

The Court: Wait a moment. Is that the right station?

The Witness: Yes, it is, your Honor.

The Court: KMPC?

The Witness: That is right, your Honor.

Q. By Mr. Doherty: What hours were those programs?

A. 6:30 until—it was either 6:30 to 8:00 or 6:30 to 8:30.

Q. In the forenoon? A. In the morning.

(Testimony of Larry Finley)

Q. In other words, the Hudson Diamond Company were putting on advertisements and you were playing the records and making the announcements?

A. That is correct.

Q. What year was that? A. 1938.

Q. That is when KMPC was a part-time, thousand-watt station?

A. I don't know the mechanics of KMPC.

Q. That is before it became owned by Mr. Richards, the present owner?

A. I can't answer that, either, Mr. Doherty. [693]

Q. All you know is that you got there a little after six in the morning and you stayed until a little after eight, and you played records and made announcements?

A. That is correct.

Q. Is that correct? A. Correct.

Q. And tried to sell Hudson Diamond's products?

A. Correct.

Q. That was the only activity you had in the entertainment or musical field during those approximately five or six years until you went into business for yourself?

A. Correct.

Q. Is that right? A. I believe you are right.

Q. Yes. Then you decided to open a store in Burbank? A. That is right.

Q. And that was a credit jewelery store? A. Yes.

Q. About what size was that store when you first opened it, the room?

A. The room when I first opened was a 16-foot front by 105 feet in depth. That was when I first opened it.

(Testimony of Larry Finley)

Q. Yes. Then you later on opened a branch over on Lankershim Boulevard in North Hollywood?

A. That is correct. [694]

Q. And what size was that store?

A. 14 by 35 or 40. I don't recall.

Q. And both were known as credit jewelery stores?

A. That is correct.

Q. And then you later opened another one across from the Lockheed plant?

A. No. I had another store before that.

Q. You had the Lockheed one before you had the—

A. No. We enlarged our Burbank store and took on an extra 16 feet for appliances and opticals in our offices.

Q. I am speaking now about your so-called branch store. Your first store was Burbank? A. Yes.

Q. Your second one was in North Hollywood on Lankershim? A. Yes.

Q. And the third was 'across from the Lockheed plant?

A. Yes. But before we opened the Lockheed, we enlarged our Burbank store.

Q. What size was the Lockheed 'store?

A. The Lockheed store was—I don't recall the size. Mr. Doherty. Oh, about 14 feet square, I should say, 14 or 15 or 12.

Q. Yes. That is the one where you sold working clothes and alarm clocks? A. No. [695]

Q. Did you sell the working clothes at the Lockheed? A. No; we didn't.

Q. Where did you sell them, out of the Burbank?

A. Burbank and North Hollywood.

(Testimony of Larry Finley)

Q. And you sold those businesses out in January of 1944? A. That is correct.

Q. Did you have a partner in those businesses?

A. Yes, I did.

Q. Who was your partner? A. Robert Thorne.

Q. And he was the part owner of them?

A. Yes.

Q. Was Mrs. Finley a partner with you also?

A. Yes. It was a four-way partnership. I actually owned 25 per cent of the business, Mrs. Finley owned 25 per cent, Mrs. Thorne owned 25 per cent, and Mr. Thorne owned 25 per cent.

Q. And that was drawn up in a regular form of articles, a copartnership? A. Yes.

Q. And that is how those stores were operated during those approximately three years?

A. I believe you are right.

Q. Yes. Now, in connection with your merchandising of [696] those credit jewelry stores you hit on the plan of putting on free shows at the Casino ballroom?

A. Yes.

Q. You would pick out a night where the local management knew there would be a slim crowd and you bought it that night, is that correct? A. Yes.

Q. Usually a Tuesday night?

A. I don't recall if it was a Tuesday or a Thursday.

Q. Anyhow, they were what is known in the band business or entertainment business as "thin" nights?

A. That is correct.

Q. And you would then send out a great number of free tickets to as many people whose names you could get, connected with the Lockheed or other defense work-

(Testimony of Larry Finley)

ers, and have these tickets collected at the door as free admissions? A. That is not right.

Q. Did you sell the tickets? A. No; we didn't.

Q. You gave them away, did you not?

A. Yes. We didn't send them out. They came in the stores to get them.

Q. You advertised that they could get them at the stores? A. That is correct. [697]

Q. And the show was put on under the auspices of Finley's the Jeweler? A. Yes, Finley's.

Q. And you would use them as a means of selling your merchandise? A. No.

Q. It was not a promotional plan to sell merchandise?

A. It was merely to acquaint people with the store and the location of the store. They did not have to buy anything to get a ticket. They were under no obligation.

Q. I did not say—

A. That was not what you said. I am sorry.

Q. No. I did not say, Mr. Finley, that they had to buy to get the ticket; but the purpose of issuing the ticket and putting on the show was to promote Finley's, to sell merchandise? A. It was sales promotion; yes.

Q. And you think that that happened some five or six times during the approximately three years you were in business?

A. I don't know the exact number of times. We did it several times.

Q. Well, how many times; less than five times or more than five?

A. It might have been less than five. I don't recall [698] the exact number of times.

(Testimony of Larry Finley)

Q. And what other activities during this approximately three years you were in business did you have in connection with the entertainment or music business?

A. Well, at one time, I recall just before Pearl Harbor a group of business men in the Valley and myself had plans drawn up for a half million dollar ballroom that we were going to build in the San Fernando Valley. That was the time that I called M.C.A. and requested that they send someone over to me to talk about bands. Mr. Ames Bishop came over at that time and we discussed the band situation. As I recall, he saw the plans and specifications that we had drawn up.

Q. Now, Mr. Finley, if you will just listen to my question? I say, what other activities did you have in the entertainment or musical field? I am not interested in plans about what you were going to build. What shows did you put on; what did you do in the way of presentation of musical entertainment?

A. I am sorry. I thought you meant what activity, Mr. Doherty. That took quite a bit of my time at the time. That is why I mentioned it.

Other activities, I worked with Warner Brothers on their premiere of Dodge City. They had premiere of the picture Dodge City in Dodge City. A train left from Burbank. The Chamber of Commerce worked with Warner Brothers, and I was in [699] charge of the entire parade and broadcast and the ceremonies at the station that took place in Burbank. I conducted several large dances in connection with bond drives, erected the first bond booth in my store, had radio broadcasts from the store, produced and staged the midnight show for the Merchants Association. It was very well received.

(Testimony of Larry Finley)

Q. Now, the broadcast you spoke of was from your store to advertise Finley's?

A. No; it wasn't. In fact, there was no mention made whatsoever of Finley's on that broadcast. It was a bond drive and I did not want any publicity on the thing. [700]

Q. That was non-commercial? A. That's right.

Q. The street dance was non-commercial?

A. That's right.

Q. And this other entertainment you referred to here was entirely non-commercial?

A. From a personal standpoint, do you mean, Mr. Doherty?

Q. Not from your standpoint, but the whole activity. No one was going to make money out of it?

A. No. Admissions to the street dance were by the purchase of stamps or bonds. Admission to the show was by the purchase of bonds. We raised \$600,000.00, I think, in bond purchases on it.

The only truly commercial ballroom enterprise I had when I was in business was that I promoted the first swing-shift dance that was ever held for aircraft workers in this area. In fact, I originated the swing-shift dance.

Q. Now, you have told us of the activities you have had in the entertainment and similities activities since you were a young man back with Markson's?

A. I don't recall anything else.

Q. Pardon?

A. I might have. I don't recall anything else off-hand.

Q. Now, when you made this bid to the City of San Diego [701] in October, 1944, you addressed it to the Mayor and the City Council and the City Manager, I believe? A. Yes.

(Testimony of Larry Finley)

Q. That was in response to specifications?

A. That is correct.

Q. And you wanted the Mayor and the City Council to have a true picture of your background?

A. That is correct.

Q. So they would be able to pass upon whether you were the type of person to operate Mission Beach?

A. That is correct.

Q. Do you remember making in that bid the following statement, on page 4, paragraph 17, and I am quoting,—

A. Yes.

Q. —“My experience in the amusement and entertainment world has been varied and extensive, for the past twenty years having been successfully connected with radio, theatre and ballroom enterprises.” You made that statement? A. Yes, I did.

Q. Did you tell the members of the City Council at that time that twenty years from October, 1944, would bring them back to the period when you were eleven years of age?

A. Did I tell them that? Q. Yes

A. No, I didn't, but I did not tell an untruth when I [702] made that statement.

Q. In other words, you say this is a true statement?

A. Yes.

Q. That “My experience in the amusement and entertainment world has been varied and extensive, for the past twenty years having been successfully connected with radio, theatre and ballroom enterprises”? A. Correct.

Q. That is a true statement? A. Yes.

Q. But you did not tell the members of the City Council and the Mayor that twenty years prior to that bid

(Testimony of Larry Finley)

would bring you back to a period when you were eleven years of age? A. That is correct.

Q. Now, you went to New York after you sold out in February, 1944, and you remained there for six months?

A. Yes.

Q. Then you returned to Los Angeles?

A. To San Diego.

Q. To San Diego. I believe you had been connected or known a Mr. McKinnon while you were around Burbank, did you not? A. That's right.

Q. He used to operate a weekly newspaper in that area? A. No. [703]

Q. Wasn't he in the newspaper business in North Hollywood or Los Angeles? A. Yes.

Q. When I said in that area, by Burbank and North Hollywood I mean that area.

A. Yes, it was a semi-weekly paper.

Q. A semi-weekly paper?

A. That's right, plus other papers that he published.

Q. Then later he went to San Diego and opened a weekly paper?

A. I am not familiar with that. I don't think that is the way they sell—

Q. Anyway, you became acquainted with him?

A. Yes.

Q. And Mr. McKinnon and you were jointly interested in making an application for a radio station,—an application made sometime in 1944? A. Right.

Q. He is still in San Diego? A. Yes, he is.

Q. And publishing a paper?

A. A daily paper in San Diego.

Q. How? A. It is a daily paper, not a weekly.

(Testimony of Larry Finley)

Q. Yes, a daily paper. You bought the Trianon in [704] August, 1944? A. Yes.

Q. And you operated that without name bands?

A. That is correct.

Q. As you said this morning, you have had a successful operation there? A. Most successful.

Q. How far distant is that from Pacific Square?

A. Around a couple of miles, I should say.

Q. A couple of miles? A. I should say so, yes.

The Court: Where is it located?

The Witness: At 11th and Broadway.

The Court: And Pacific Square is at the foot of Broadway?

The Witness: It is at the foot and up several blocks. It is about 22 or 25 blocks, I should say, in distance.

Q. By Mr. Doherty: Is it on the same street, approximately?

A. No, it isn't. The Trianon is on Broadway, which is the main street of San Diego, and the Pacific Square is on Pacific Highway.

Q. When did you first become interested in actually bidding on Mission Beach? I believe yesterday, to refresh your memory, you said when Reichman was playing at Pacific Square and Freddie Martin was playing at Mission Beach. [705]

A. I don't think I said that yesterday, Mr. Doherty.

Q. Well, you said on your way one time from your home you picked up two servicemen and went up and looked at it. A. That is correct.

Q. I don't remember that you gave any date, but you did state that later you went over there and talked to Freddie Martin, when he was playing there? A. Yes.

(Testimony of Larry Finley)

Q. And that was the time that Reichman was playing at Pacific Square?

A. Well, I made up my mind I would be interested in bidding on it the night I was at the Beach with the two sailors.

Q. When did you begin any active preparations to bid for Mission Beach?

A. Not for a while after that. I was very much occupied with the Trianon, and with the hopes of getting our application for the radio station, and I remember at that time my wife was taken to the hospital and had a very serious operation, so I was detained in my plans for a short spell of time. I didn't have too much time to think of it.

Q. I am showing you Plaintiff's Exhibit 9, and I am showing it to your counsel, and on September 15, 1944, it shows Joe Reichman playing at Pacific Square and Freddie Martin at Mission Beach. Was that the occasion when you [706] spoke to Freddie Martin?

A. Yes, I spoke to Freddie when he was there for three nights.

Q. Had you made up your mind to bid for Mission Beach before you talked to Freddie Martin on September 15th, or after that?

A. No, it was before that occasion. I remember telling Freddie I was going to bid on the Beach, and I had hopes of getting it.

Q. Prior to that time you had determined to bid?

A. Yes.

(Testimony of Larry Finley)

Q. Had you taken any steps towards interviewing the Council before that time?

A. I don't know if I talked to them before that date, or after that date, Mr. Doherty. I don't remember. I don't remember dates that well, to remember anything like that.

Q. Well, at some time, anyhow, between August, 1944, and September 15, 1944, you determined to bid for Mission Beach; is that right?

A. I should say it might be, yes.

Q. And you knew that Mr. Dailard had made a bid for Mission Beach?

A. No, I hadn't.

Q. Didn't you know that on October 30th, before you had the meeting with the Council? [707]

A. On October 30th I did, but not on September 15th.

Q. Had you examined the bid on October 30th at the time when you went before the Council?

A. No. His bid was read at the Council meeting.

Q. Was it read in full?

A. Yes, I think it was. I think they read it in full, and I know I went down to the Civic Center, oh, a couple of weeks after to reread it again, to see what it said, at the City Clerk's office. It is a matter of record there. I am quite sure it was read in full at that time.

The Court: I think we had better suspend at this time. Ladies and gentlemen, we will take a recess until 2:00 o'clock this afternoon. Remember the admonition and keep its terms inviolate.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p. m. of the same day.) [708]

Los Angeles, California, Tuesday, February 5, 1946.
2:00 p. m.

The Court: All present. Proceed.

LARRY FINLEY,

called as a witness by and in his own behalf, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Resumed)

By Mr. Doherty:

Q. Mr. Finley, in the operation of the jewelery business what part of the business activity did you emphasize as compared with those of Mr. Thorne, your partner, and your respective wives?

A. Primarily promotion and advertising.

Q. Promotion and advertising?

A. That is correct.

Q. And that is what you leaned on most, as it were?

A. Yes.

Q. And was that during the entire approximate three years that you operated that business? A. Yes.

Q. Now I will call your attention to the statement—I should not say “statement”—your bid to the City Council of October the 30th, 1944, and ask if you did not on that occasion make this statement to the City Council, [709] page 5 of Exhibit 8:

“My experience as a business man has been very stable, having successfully operated a chain of retail stores in Southern California.”

Do you remember making that statement?

A. Yes, sir.

Q. And what you were referring to then was your operation of the jewelery business? A. Yes.

(Testimony of Larry Finley)

Q. And your activity in that was by way of promotion and advertising? A. Not solely, Mr. Doherty.

Q. Primarily, though?

A. Primarily, but not solely.

Q. Yes. And does this statement about express your views of yourself in that particular field: "I achieved the reputation of being the outstanding promotion and advertising man in my field in the entire United States"?

A. What was that question, the first part of it, again?

Q. Does that about describe you?

A. My own description, do you mean? Yes.

A. No; it does not. It is not my own description.

Q. You said that in the statement to the City Council, did you not? [710]

A. Yes, I did, but I have been acclaimed that by various trade papers in the jewelry business and by people.

Q. You have been acclaimed that? A. Yes.

Q. And you just merely wrote down here what the acclaim was from the radio and trade papers and other publications? A. Yes; that is right.

Q. In other words, you concluded from reading those articles and hearing them speak of you, that you had "achieved the reputation of being the outstanding promotion and advertising man in my field in the entire United States"?

A. That is what several of the magazines said about me, Mr. Doherty.

Q. Yes. A. Yes, sir.

Q. And what was your field, Mr. Finley?

A. Jewelry. operation, promotion, advertising.

Q. But not in entertainment and amusement?

A. It doesn't state that there.

(Testimony of Larry Finley)

Q. Pardon me?

A. I say, it doesn't state "entertainment" in there.

Q. No. You said, "in my field."

A. That is correct.

Q. And you referred only to the jewelery business?

A. Well, I don't know what is in front of that paragraph that you read, but I imagine it has something to do with [711] the jewelery business.

Q. I will let you read it and see. A. All right.

Pardon me, may I at this time make a correction to my statement of this morning? I neglected to do so when I got on the stand.

Mr. Doherty: Would you mind, your Honor, to let me finish this one, and then he can make a correction after I get through with this particular matter.

Q. I am now directing your attention to your bid to the City Council of October the 30th, 1944, Exhibit 8, page 5. See if I read it correctly:

"My experience as a business man has been very stable, having successfully operated a chain of retail stores in Southern California. I achieved the reputation of being the outstanding promotion and advertising man in my field in the entire United States."

A. How about this up here before that, though, "in the retail business"? I am talking about the retail business there, Mr. Doherty.

Q. Yes.

A. And apparently in the same paragraph.

Q. I will go back to that. What you are referring to about your outstanding reputation as the outstanding man in the United States is the retail business as a jeweler?

[712] A. That is correct.

(Testimony of Larry Finley)

Q. Now, read this sentence, to which you just directed my attention, which immediately precedes the sentence that I read, "In the retail business I operated on a large volume low profit policy, and I am convinced that the same plan can be carried out successfully in the amusement business and at a great advantage to the city and its residents."

A. That is right.

Q. I have made a correct reading of it?

A. Yes. Then you have followed with the statement about in my field.

Q. Oh, yes. There are about 12 or 15 pages in here, Mr. Finley, in which you speak about yourself.

Now, what was it that you misstated this morning, that you said you would like to correct?

A. You asked me whether or not I had made any tax returns from my address on Ridgeway in San Diego. I was under the impression I had not, but my auditor, who was in the court room, said that I did make two tax returns from the Ridgeway address in San Diego.

Q. That would be for the taxable period, 1944?

A. I didn't ask him what returns. He said it was a partnership return and a personal return. It would have been filed in 1945.

Q. I can tell you, Mr. Finley, I am not going to make [713] any point of what you did in that respect.

A. Well, you asked me and I thought I would correct the record.

Q. Well, just leave it out of your memory because I am not going to pursue it any further. A. O.K.

Q. Now, you didn't really intend to operate Mission Beach under a lease at a profit, did you?

A. I certainly did.

(Testimony of Larry Finley)

Q. Well, didn't you wish to operate it more from a civic standpoint than a profit?

A. No, I did not. I did not assert that fact.

Q. You had in mind a profitable enterprise there, did you?

A. A large volume, low profit, yes, sir.

Q. Now, calling your attention again to Exhibit No. 8, being your bid to the City Council, to this particular sentence in it, and follow me and see if I read it correctly, "A great part of my amusement"—

A. Will you talk a little lower?

Q. I don't speak loudly—

A. If you read it, it is all right, Mr. Doherty.

Q. I don't speak loudly, Mr. Finley, to annoy you, but so that that last gentleman in the jury box can hear it. (Continuing): [714]

"A great part of my amusement and entertainment experience has been more civic in nature than as a means of personal profit, and it is from the civic standpoint that I expect to operate the Amusement Center." You said that, didn't you?

A. Yes.

Q. And you wanted the City Council to believe, did you not, that you were going to operate Mission Beach down there as a great civic enterprise, and not one to yield you a profit?

A. That is not so, Mr. Doherty.

Q. That is not so.

A. Definitely.

Q. Pardon me?

A. Definitely not so.

Q. In other words, you went in down there to make money?

A. Yes, I did, and also offer a civic park.

(Testimony of Larry Finley)

Q. You did not mean then what you said to the City Council and the Mayor?

A. I did mean it. I didn't state I was doing it solely as a civic enterprise.

Q. I didn't say, sir, that you did it solely from a civic enterprise but that, "A great part of my amusement and entertainment experience has been more civic in nature than as a means of personal profit," and that is how you [715] expected to operate the Amusement Center?

A. Yes, that was my statement.

Q. Now, when you started to operate down there, did you ascertain the amount of receipts that Mr. Dailard had taken in from the amusement concessions and from the ballroom?

A. Approximately. I couldn't get the exact figures, but I got the approximate figures.

Q. Did you ascertain what he was paying out by way of salaries and overhead and operating expense?

A. I had a rough idea of those figures, yes.

Q. You determined, did you not, that his operation was not a sound one from a business standpoint?

A. That is correct.

Q. And you started out on an entirely new policy?

A. Right.

Q. And you have been operating there on a policy entirely distinct from what he operated during his leasehold?

A. Somewhat distinct from his policy, yes.

Q. Well, yours was for the purpose of attracting great crowds there? A. Correct.

Q. And doing a great amount of advertising?

A. Right.

(Testimony of Larry Finley)

Q. And a great amount of publicity?

A. Right. [716]

Q. And substantial amounts of entertainment?

A. Yes.

Q. Is that right? A. That's right.

Q. And to lower the prices? A. That's right.

Q. And to give the people more for nothing?

A. That is correct.

Q. Your hope was that that policy would yield you ultimately more net profit?

A. At the same time I devised that plan of lower prices, I also devised the plan of an increased revenue to myself, Mr. Doherty.

Q. Well, you hoped, did you not, to make a greater return to yourself in net profit by the policy you were pursuing than you would if you pursued Mr. Dailard's policy of a more conservative policy?

A. That is not exactly right. I can explain it to you if you would like.

Q. Well, is my question not clear?

A. No, it isn't. It wouldn't work that way, Mr. Doherty.

Q. I will withdraw that question. A. All right.

Q. And see if I can't direct one to you that is clear, [717] sir. A. All right, sir.

Q. You did not have before you the amount of the pay roll that Mr. Dailard was paying out each month in connection with his operation?

A. No. I figured about what his pay roll was. It wasn't very much.

(Testimony of Larry Finley)

Q. And the figure of the pay roll you were going to operate under was a much larger pay roll?

A. At the time, yes.

Q. You did not have the figures he was paying for his bands and entertainment out there, did you?

A. Well, I knew that some of the bands went into percentages, and I had a fairly good idea of the general picture, Mr. Doherty, when I went in.

Q. Did you have the figures that he paid out in advertising?

A. No; no, I didn't. I approximated it.

Q. You figured your own budget on advertising?

A. Yes.

Q. And you concluded that your system would ultimately yield more net profit to you?

A. Are you speaking of the ballroom or the beach?

Q. The entire operation.

A. I knew that my system at the beach would result in [718] more profit. As I say, I would like to explain the answer, if I may.

Q. Well, go ahead, Mr. Finley. I will say this, don't go into a long argument, or you and I will disagree. Don't make a speech to me. Make your explanation.

A. This is an explanation. It is not an argument. The concessions at Mission Beach are leased concessions. People lease from me. As far as setting the ceiling on prices, for example, at the hot dog stand the price was reduced to 10 cents. At the same time I didn't take any less revenue from them in rental. On the other hand, the 25-cent milk bottle games that were there last year and paid \$300.00 a month rent dropped their price to 10 cents to the public, but at the same time I increased their rent any-

(Testimony of Larry Finley)

where from fifteen hundred to two thousand dollars in their rental to me. So while there were dropped prices my revenue from the park was much larger than under Dailard's operation.

Q. In other words, you rented the concessions to the concessionaires? A. That's right.

Q. And you charged each concessionaire a flat rental?

A. Some flat and some a percentage.

Q. Flat and a percentage?

A. No, some were flat, and some were on a percentage.

Q. But the percentage was a fixed percentage? [719]

A. That's right.

Q. A fixed percentage— A. Yes.

Q. Of their gross receipts? A. Yes.

Q. And in each instance, or substantially each instance, you raised the concession rents over what they had paid Mr. Dailard?

A. That's right, to take care of our advertising and our increased overhead.

Q. In that respect you had determined that the concessions would yield you more revenue net?

A. That's right.

Q. —than Mr. Dailard was receiving?

A. That's right.

Q. But in the ballroom you had your own ideas about operating that, didn't you? A. Yes.

Q. You had your own policies?

A. I had the policy I was forced to take. It wasn't the policy I wanted.

Q. That is what the City forced you to take?

A. No. How do you mean?

(Testimony of Larry Finley)

Q. Well, didn't you have a contract with the City that you were to operate the concessions and the park in a given way? [720]

A. Yes. That was in my bid, I believe.

Q. And you had a contract that you had to live up to?

A. That's right.

Q. That was not the same contract that Mr. Dailard had for the preceding three years?

A. No, that is correct.

Q. Now, at your Mission Beach Ballroom I read off a long list of bands to your Mr.—I should say “your Mr.”—to Mr. Zucca, who was on the stand here, do you remember, the manager of the Meadowbrook down here?

A. Yes.

Q. He is an experienced operator, is he not?

A. Yes.

Q. You have known him for quite a while? I read off to him—

Mr. Christensen: Wait a minute. We haven't got an answer.

The Witness: Did I know Mr. Zucca for quite a while?

Q. By Mr. Doherty: Yes .

A. Yes, six or seven years, I should say.

Q. I read off to him the following list of bands, and asked him if these bands were name bands, and each time I call the band I will give also the date it played at Mission Beach under your management. A. Yes. [721]

(Testimony of Larry Finley)

Q. Henry Busse, February 3rd and 4th—these are all of the year 1945, and if I call off one and the dates are not correct, please stop me.

A. I don't know if I will be able to do that, Mr. Doherty.

Q. Pardon me?

A. I don't know if I can remember 52 dates throughout the year, but I will take your word that you are reading the dates right.

Q. What I am reading from, Mr. Finley, is your answer to Interrogatory No. 18 that is on file here with the Clerk.

A. That is all right.

Q. You remember making an answer to that interrogatory, in which you listed the names of the bands that played at Mission Beach?

A. Yes.

Q. From the time you took it over, until the date of the interrogatory, which was about September 30th, 1945?

A. Yes.

Q. Do you remember making that answer?

A. Yes, I do

Q. Now, I will read it off, and if I am not correct in any instance, you and your counsel can correct me.

Mr. Doherty: Your Honor, it is Interrogatory No. 18. The Witness: May I see it? [722]

The Court: Do you want to look at it?

The Witness: Yes, your Honor, to check the dates.

The Court: Here is the file, Mr. Christensen.

(The document referred to was handed to counsel.) [723]

(Testimony of Larry Finley)

Is it attached to a deposition, or is it one of the interrogatories that were propounded outside?

Mr. Warne: It is one of the interrogatories that was propounded.

Mr. Christensen: It is right here, your Honor.

Mr. Doherty: 18, Mr. Christensen.

Mr. Christensen: Thank you, sir.

The Witness: Yes; I have it here.

Q. By Mr. Doherty: Now, you are looking at your answer to Interrogatory 18, in which you were asked to give the date or dates when bands played at Mission Beach ballroom; and your answer was:

“Henry Busse, February 3rd and 4th; Tiny Hill, February 10th and 11th; Wingy Manone, February 17th and 18th; Sully Mason, February 24th and 25th; Ansil Hill, March 3rd and 4th; Ada Leonard, March the 10th and 11th; Ansil Hill, March 17th and 18th; Shorty Sherock; March 24th and 25th; Carlos Molino, March 31st, April 1st; Ansil Hill, April 7th and 8th; Muzzy Marcellina, April 14th and 15th; Chris Cross, April 21st and 22nd; Ansil Hill, April 28th and 29th; Frankie Carl, May 11th to June 11th;”—that means May 11th to June 11th, the entire month?

A. Four weeks, yes; the four weeks.

Q. “Tony Pastor, June 12th to July 1st; Jimmy Dorsey, July 3rd to July 16th; Tommy Dorsey, July 17th to [724] July 29th; Eddie Miller, July 31st-August 5th; Glen Gray”—

Mr. Christensen: I think you misread that, didn't you, Mr. Doherty? Will you re-read that, please?

(Testimony of Larry Finley)

Mr. Doherty: Which one, Tommy Dorsey?

Mr. Christensen: Eddie Miller, sir.

Mr. Doherty: I will go back.

Q. "Tommy Dorsey, July 17th to July 29th; Eddie Miller, July 31st-August 5th."

That is the way it is written here.

Mr. Christensen: Yes, sir. Thank you.

Q. By Mr. Doherty: "Glen Gray, August 7th to September 2nd; Jinky Tomlin, September 3rd to September 16th; Boyd Raeburn, September 18th to September 30th."

Now, that is a correct list, is it not?

A. Up until that time; yes, sir.

Q. And those were the bands that played at Mission Beach for you from February the 3rd, your opening date, until the date of this interrogatory, which was in the early part of October, I think, of 1945, is that right?

A. Yes; these bands did play.

Q. Now, it was the plan of your operation there, was it not, to only play two nights a week until approximately May 15th? [725]

A. Until May 11th, when Frankie Carl opened.

Q. And then you were to play six nights a week at the Mission Beach ballroom until September 15th?

A. I don't recall the date. It is either September 1st or September 15th.

Q. Yes. And then you were going to go back to either one night a week or two nights a week operation?

A. Two nights a week basis; yes, sir.

(Testimony of Larry Finley)

Q. So it gave you around about four months—rather, let's see; June, July, August, September—about four months of operation, didn't it?

A. About three and one-half months of operation.

Q. About three and one-half months. I note you had the two Dorsey boys there preceding July the 4th and the entire month of July? A. Yes, sir.

Q. From your experience in the entertainment business at a beach operation is that considered a desirable time?

A. Fourth of July is very desirable.

Q. That is the best month of the year, isn't it?

A. Not necessarily. It is as good a month as there is in the year; one of the best months in the year.

Q. Counting the July the 4th holiday, etc., don't you have more people on vacation around beaches during that month than any month in the year? [726]

A. Well, that, again, depends on your attractions that you have, Mr. Doherty. You could have a very bad July with bad bands. If you put the Dorseys in in the month of September, you do business with them. So it is hard to say it would be the best month of the year.

Q. And you may have a very bad operation sometimes when you have a name band in a location, too, might you not? A. Yes; that is very possible.

Q. In fact, you know an instance down in San Diego where there were two name bands playing in Pacific Square at one and the same time, and the boys and girls thought it was so bad they came out to Mission Beach to hear your so-called semi-name band?

A. That is correct.

(Testimony of Larry Finley)

Q. Yes. And the two name bands were Bob Chester and Teagarden?

A. That is right; Jack Teagarden.

Q. And they were both well known name bands, were they not?

A. Well, they were not their own bands that we had down there at that time, Mr. Doherty.

Q. Pardon me?

A. We understand they were bands that the boys just got together up in Los Angeles and took down to San Diego. That is the story we got of it.

Q. You do not know that of your own knowledge, do you? [727]

A. Well, the musicians were talking about it, and it is usually the way we hear those things.

Q. Mr. Finley, you do not know that of your own knowledge, do you? A. Of my own knowledge?

Q. Yes; you do not know whether or not Bob Chester and Jack Teagarden at that particular time had just thrown together a bunch of boys and took them down to San Diego to play at the Pacific Square, do you?

A. Yes; I do.

Q. That they had gotten together a bunch of boys and these men were not their regular performers?

A. I stated that I did, Mr. Doherty.

Q. Of your own personal knowledge? A. Yes.

Q. Did you go around and see the band?

A. No; I did not.

Q. Did you see the members that were playing there at that time?

A. Several of the boys had played there at that time, played for me at the Beach with other orchestras, and

(Testimony of Larry Finley)

they apprised me of the fact that they were down there with Bob Chester and Jack Teagarden. I don't recall exactly who, because at that time I was not so much interested.

Q. Then, you do not know of your own personal knowledge? [728]

A. The boys told me that they played, so I would say I know if of my own personal knowledge.

Q. That is what you call your personal knowledge?

A. Yes.

Q. When you got this lease down at Mission Beach was it written up in the name of yourself and your wife as partners?

A. No; it was written up as myself.

Q. But you and your wife are partners in the Beach operation? A. Yes.

Q. That is, the ballroom and the concessions?

A. Yes.

Q. Have you a regular written articles of copartnership? A. Yes; I do have.

Q. And she has a half interest and you have a half interest? A. That is correct.

Q. And those articles of copartnership have been in effect ever since the Beach operation started?

A. No. It started before that, and the articles of copartnership have been in effect since January or February of 1944.

Q. And are still in effect? A. Yes. [729]

Q. Now, the matter of the Mission Beach operation after you took it over, you have testified here to various efforts on your part to get bands into Mission Beach; and in one of your conversations, part of your testimony,